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The subject of electricity has been productive of considerable new law, or rather, new applications of old principles. The rather novel question arose a short time ago in the St. Louis Criminal Court as to how far one could be guilty of stealing electricity. The prosecution was against a hardware dealer, who was charged with the theft of electricity by tapping an electric light wire and thus securing illumination free. It resulted in the discharge of the accused. The judge would not concede that the offense was larceny, and the grand jury would not say it was a fraud. The view of the court was clearly erroneous. It has been held that "gas" may be the subject of larceny, and undoubtedly the same doctrine will apply to electricity.

A late electricity case is Koch v. North Ave. Ry. Co., decided by the Court of Appeals of Maryland. There a bill for an injunction had been filed by an abutting land owner against the construction of a street railroad to be operated by electricity by means of the overhead system. The defendant company was incorporated under a general act providing for the formation of passenger railway companies in cities, and nothing was said in the certificate about the motive power. The authority to use electricity was derived from an ordinance of the City of Baltimore. The question involved was as to the power on the part of the city authorities to permit the use of electricity for propelling street cars. The decision of the court was favorable to the company. It was held that the use of electric motors does not impose a new servitude upon the land of abutting owners, and the latter, therefore, had no cause to complain of the act of the municipal government regulating the mode of use of the street for public travel. This question has been considered by many other courts, which have generally held favorable to the proposition that municipal corporations have power to authorize the use of electricity for street car propulsion. They proceed on the principle that a street is a way set apart for public travel, and that the use of electricity for propelling street cars is but a new and improved motive power, in no manner inconsistent with the uses and purposes for which streets were opened and dedicated as ways for public travel. A late decision by the Supreme Court of New Jersey, in State v. Trenton, however, seems to be in conflict with this proposition. It was there held that a statute authorizing the use of electric motors, with the consent of a city, was not a sufficient warrant for a resolution providing for the use of poles and wires.

In the recent case of State v. First National Bank, the Supreme Court of South Dakota hold that a national bank is subject to indictment, trial and punishment for a violation of a State law which makes it a misdemeanor to receive a greater rate of interest than is allowed by law. The case, we understand, has been appealed to the United States Supreme Court. The decision of that court will be awaited with interest. The fact that national banks have not heretofore been brought within the operation of severe usury statutes has been a great discouragement to State legislation of that character. If the above case is upheld, other States will no doubt be induced to adopt similar statutes.

The *Chicago Legal News* calls attention to the fact that the Code of Iowa permits "single individuals" to incorporate, thus opening to them the door to perpetual existence, and facetiously remarks that "whether it was the intent of the legislature to limit this precious boon to single individuals as contradistinguished from married persons is an open question. If such was the purpose of the legislature, the law is a species of class legislation which should not be upheld by the courts." We are inclined to differ with our learned contemporary. If the intent of the legislature was as suggested, that body undoubtedly had good reasons to conclude that "married" individuals were already sufficiently "incorporated," and therefore entitled to no further consideration in that behalf.

NOTES OF RECENT DECISIONS.

CONSTITUTIONAL LAW — SPECIAL LEGISLATION—EMPLOYER AND EMPLOYEE.—The case of San Antonio & A. P. Ry. Co. v. Wilson, decided by the Court of Appeals of Texas, presents a question of constitutional law something similar to the Indiana case of Hancock v. Yaden, and other cases wherein is involved the validity of legislation bearing on the duties of employers towards their employees. It was held in the Texas case that Acts 1887, p. 72, providing that in the event of a railroad company refusing to pay its indebtedness to an employee within fifteen days of demand, "it shall be liable to pay such employee twenty per cent. on the amount due him as damages, in addition to the amount due," is special legislation, not protecting alike the interest of employer and employee, and is unconstitutional. Simkins, J., says:

Has the legislature the power to provide a penalty against the railroad companies for failing to pay their employees their wages when the same are due? Such legislation can be sustained only upon the theory that railway companies are public in every respect, and the legislature has a right to regulate them, not only in the matters relating to their duties as public carriers, but also in all their internal economy. It cannot now be questioned but that railways occupy a two-fold character,—public and private. As a highway exercising the sovereign right of eminent domain, and with its exclusive privileges and its great monopolistic power over the commerce and traffic of the people, it is essentially public in all of its relations and duties as a public carrier, and the State must see that the great trust is not abused, and that its duties are properly performed. Munn v. Illinois, 94 U. S. 113. Under article 10, § 2, of the constitution, the public relations of the railways of the State are those of a common carrier, and the legislature is empowered thereunder to determine what are the abuses, unjust discriminations, and extortions in rates in freight and passenger traffic, and to pass all laws to correct the same, and has full power to pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on railroads, and enforce all such laws by adequate penalties. It is to be observed that the provisions of this section are mandatory,—"the legislature shall pass laws," etc. While it is true the legislature has the right to pass laws upon all subjects not forbidden by the constitution of the State or of the United States, yet it is also true that the constitution often speaks in imperative terms requiring the passage of certain laws. There is constant growth and progress in a people, as in the individual, and the organic law must reflect the statutes of the people. Changes are slowly made, and are for a long time thwarted by constitutional inhibition, until at last the issue is made and becomes a part of the constitution. The construction to be placed on such portions of the constitution is that the people have said what they desire on the question, and all that they wish to say. This is well illustrated by the railway agitation in all the States of the Union, which led to the adoption of article 10, § 2, in Texas, and similar provisions in the various States. There is no question as to the scope of this section. Its provisions necessarily refer to and contemplate injuries to the public arising out of a violation of its duties as a common carrier, and nothing else; that is to say, the abuses, unjust discriminations, and extortions, and the establishment of reasonable rates, and enforcing such laws by penalties. Within this broad field it rests with the legislature to determine what are those duties to the public, and what constitutes abuses; and also what remedies are necessary to prevent them, and to decide whether the abuses shall be corrected through statutes which declare the act or acts to be a crime punishable as such, or whether the act or acts shall be corrected through a civil action with punitive damages. Under this head are to be referred all the various laws upon our statute books in reference to the railways and their relations to the public, and their right to enact these laws is sustained by the United States Supreme Court in the Granger Cases and many subsequent cases, by the decisions of the highest courts of the several States, and by our own courts. In the case of Railway Co. v. Harry, 63 Tex. 256, the supreme court upheld the validity of a statute authorizing the recovery of an amount equal to the freight charges for every day's wrongful detention of freight, the same being passed in obedience to section 2, art. 10. See, also, Railroad Co. v. Dwyer, 75 Tex. 580, 12 S. W. Rep. 1001; Railway Co. v. State, 61 Tex. 343, 2 Civil Cas. Ct. App. 491.

Upon similar grounds are sustained statutes making railway companies liable in double value for the stock killed when roads are required but fail to fence their roadways; that is to say, they are sustained on the ground that killing stock by engine endangers the lives of the traveling public. Railroad Co. v. Humes, 115, U. S. 512, 6 Sup. Ct. Rep. 110, 82 Mo. 221. But when we consider the relations of railway companies to their own servants, both as to contracts of employment and payment, we find a field in which special legislation has no right ordinarily to enter, except in favor of life, and in which railways stand on the same footing with all other corporations or persons, and which cannot be contemplated in section 2, art. 10. The relation of master and servant must ever be purely voluntary, resting on contract of parties. The employer and employee must always deal at arm's length. Their interest in making the contract is always adverse. The employee always seeks the highest wages for the least amount of work, and the employer the greatest amount of work for the least pay. Unquestionably, so long as men must earn a living for their families and themselves by labor, there must be, as there always has been, oppression of the working classes. Yet the law has never undertaken, except in a limited extent, and upon principles of pure justice, to lift them above the plane of equality, upon which all should stand alike before the law. Tied. Lim. 571. In Texas the constitution has made innovation on the common law by exempting current wages, giving license to mechanics and material-men, and by protecting laborers' current wages against contractors on public works and railways, (article 16, §§ 35, 37); the intention being to preserve the rights of the laborer engaged in the construction of railways, etc., and not those regularly engaged in its service; and the method of protection indicated is by lien. But, conceding for the present that the legislature has the right to enforce ordinary labor claims by penalties, they certainly cannot select out a certain class for the exercise of such legislation. The doctrine is often stated that a statute is general and uniform in its operation when

it affects equally all who are brought within the relations and circumstances provided for, though it may not operate on every citizen. 3 Amer. & Eng. Enc. Law, 697. But it by no means follows that the legislature have the right to impose any burden simply by placing it on a certain class. It must rest upon some reason upon which it could be defended. Cooley Const. Lim. 393. Unquestionably, the legislature in the exercise of its police power, may subject any occupation, business, or class to reasonable regulations when required by public interest or welfare. But in all illustrations of the exercise of this power it will be found there was some circumstance of threatened damage to the public or others that required the regulation. Tied. Lim. 197. And no well-considered case can be found sustaining a penalty on an ordinary contract where public interest was not actually involved; much less can it be shown that contract debts of a named class were singled out, and a penalty attached. It may be stated as an established maxim of State polity that legislative authority cannot reach the life, liberty, and property of the individual except where he is convicted of crime, or the sacrifice of his property is demanded by a just regard of public welfare. Taylor v. Porter, 4 Hill (N. Y.), 145; Mayor v. Yuille, 3 Ala. 137; Wilkinson v. Leland, 2 Pet. 658; Tied. Lim. 236, 237. In Wally v. Kennedy, 2 Yerg. 554, the court says: "The rights of every individual must stand or fall by the same rule that governs all other members of the body politic under similar circumstances, and every special law which affects individual rights, or does the same thing by restricting the privileges of certain classes of citizens, and not of others, when there is no public necessity for such discrimination, is unconstitutional and void." Before the tribunals of justice the ordinary litigant can only recover his interests and costs; and where there is fraud, or acts on the border land of crime, he may recover exemplary damages, as recompense to himself and punishment to the offender. Sedg. Dam. 371; Railroad Co. v. Humes, 115 U. S. 512, 6 Sup. Ct. Rep. 110. And where the process of the court is used for wrongful purposes, as in appeals for delay, or making false claims, 10 per cent. damages are assessed. But these rights belong to all suitors alike, and the law is uniform and common to all. Such is the "known course of the law of the land" and "due process." An exception that undertakes to single out a single class and attach a penalty to their failure to pay one class of their contractors is not due process, and cannot be sustained. *In re* Ziebold, 23 Fed. Rep. 791. The proposition here is to single out railway companies, and attach a penalty of 20 per cent. for failure to pay servants' wages. It is impossible to regard the excess beyond the amount of the debt other than a penalty. It is not resting in contract, but is a penalty or fine for punishment. It does not apply to telegraph, telephone, or express companies, warehouses, elevators, mills, street railways, gas and electric companies, or hotels, or any of the various enterprises of public necessity, interest and convenience, as to which it might properly be applied.

It cannot be contended that the employment and payment of the labor on railways is a matter affected with a public interest, for then it follows, under Munn v. Illinois, 94 U. S. 125, that the State has the right to regulate the amount paid, and therefore the amount and character of the work to be done. Mayor v. Yuille, 3 Ala. 137; Railroad Co. v. Iowa, 94 U. S. 155; Peik v. Railroad Co., 94 U. S. 164; Water Works v. Schottler, 110 U. S. 347, 4 Sup. Ct. Rep. 48. Acts of the character under discussion have so seldom been passed by the legislatures that authorities are by no means abundant. In the case of Railway Co. v. Baty, 6 Neb. 37, appellant recovered double the value of certain hogs killed by the cars of appellant, under the statute of Nebraska requiring double the value of the property killed or injured to be paid when the company failed to pay in 30 days after demand. The question considered was, was such a statute "the law of the land?" The court says the terms do not mean "a legislative act." If they did, every restriction upon legislative authority would at once be abrogated; for what more can a citizen suffer than to be taken, imprisoned, disseised of his freehold, liberty, and privileges, be outlawed, exiled, and destroyed, and be deprived of his property, his liberty, his life, without crime? Yet all this he may suffer if an act of the assembly simply denouncing these penalities upon particular persons, or a particular class of persons, be in itself the law of the land in the sense of the constitution. Citing Hoke v. Henderson, 3 Dev. 15. "Whatever the object of such legislation may be, it is certainly taking private property of one and giving it to another by legislative decree." If the legislature desires to interfere at all in the enforcement of the labor claims, it must do so by laws equal in their operation, and protecting alike the interest of the employer and employee; for the laws knows no favorites. In Millet v. People, 117 Ill. 294, 7 N. E. Rep. 631, the supreme court held an act unconstitutional requiring owners or operators of mines to provide scales for weighing coal, and make the weight of the coal the basis of the wages. The court says: "It is not competent for the legislature, under the constitution, to single out owners and operators of coal mines, and provide that they shall bear burdens not imposed on other owners of property or employers of labor. . . . Such legislation cannot be sustained as an exercise of police power." In State v. Goodwill the court held unconstitutional an act prohibiting persons engaged in mining and manufacturing from paying off their hands in orders unless said orders complied with certain terms. The court says: It is to be observed that this act applies to certain specified classes of persons, firms, and corporations, and none others. It does not include the vast number of others which with propriety it might, if a necessity exist for the law. In those occupations where the business implies a trust or public duty the government has the power to see that the trust is not abused, and the duty is properly performed. On this principal statutes have been upheld which regulate the charges of railway companies, elelvator, telephone, telegraph, and other companies; hackmen, warehousemen, mills, etc.; but we are aware of no well-considered case in which a statute has been upheld that undertook to regulate the dealings between employer and employee, etc. 10 S. E. Rep. 287. And the same court (West Virginia Supreme Court), on the same grounds, declared unconstitutional the portion of the act prohibiting corporations from selling merchandise to their employees at a greater price than they sold to others not employed, because it was class legislation, and an unjust interference with private contracts. State v. Coal Co., 10 S. E. Rep. 288. In the Civil Rights Cases the Supreme Court of the United States says, in speaking of the fourteenth amendment: "It nullifies and makes void all State legislation and State action of every kind which impairs the privileges of citizens of the United States, or injures them in life, liberty, or property without due process of law, or denies to any of them the equal protection of the laws." 109 U. S. 11, 3 Sup. Ct. Rep. 21. What is called "class

legislation" would belong to this category and be obnoxious to the fourteenth amendment. 109 U. S. 24, 3 Sup. Ct. Rep. 18; San Mateo Co. v. Railroad Co., 8 Sawy. 238, 13 Fed. Rep. 722; Hurtado v. People, 110 U. S. 525, 4 Sup. Ct. Rep. 111, 292; Wally v. Kennedy, 2 Yerg. 554.

It is to be observed that the act in question, providing for the payment of 20 per cent. on the amount claimed as damages, makes no allowance for disputes in good faith of the amount on the part of the company; nor for any circumstances, however justifiable, which might delay the payment within the time fixed; nor for any redress of the road for plaintiff's failure to establish his demand; nor for any right of the road to collect sums due it from its customers, where the same is necessary. If the legislature, for the purpose of enforcing the payment of employees' wages, can pass a law like this, imposing 20 per cent. on the amount due, does it not imply a power to make it 10 times the amount claimed? If, then, legislative power exists to pass such a law as this, on the principle, why can the legislature not apply it to any simple debt, and if, on demand of the creditor, the debtor fails to pay by a given time, fixed by the legislature, make him pay double or treble the amount, according as the legislative enactment may direct? Whatever the object of such legislation may be, it eventuates in a decree taking property from one person and giving it to another. Railway Co. v. Baty, *supra*. It may be claimed that, because the railways are public highways and common carriers, their efficiency in public service largely depends on the promptness and fidelity of their employees, and that, unless the employees are promptly paid, it will lead to poor service, strikes, and consequent disaster to the interest of the public at large and therefore the public interest demands their prompt payment. The great difficulty with this argument is to limit it, for it extends with more or less force to every public enterprise and agency that contributes to public necessity and convenience.

LANDLORD'S LIABILITY TO THIRD PERSONS—DANGEROUS PREMISES.—In Hart v. Cole, the Supreme Court of Massachusetts decide that the owner of a tenement house is not liable for injuries to plaintiff caused by the defective condition of steps leading to parts thereof, where the injuries were received while plaintiff was coming from a wake held in the house, to which she had neither an express invitation nor one by implication as being a relative or friend of deceased. Knowlton, J., says:

This case presents for consideration important questions which have never been decided in this commonwealth. The defendant was a tenant for life of a building consisting of several tenements, which she let to different tenants, who used the outside steps in common as a means of access to their tenements. These steps were in the possession of the defendant, and it was her duty to keep them in a reasonably safe condition for the use of her tenants, and of other persons who were using them by her invitation, express or implied. There was evidence tending to show that the plaintiff, while coming from a wake in one of the tenements, was injured in passing down the steps by a defect negligently suffered by the defendant to be there. The deceased person was a brother of the wife of one of the tenants, and there was no evidence that he was an acquaintance of the plaintiff, or that she was expressly invited to the wake, or that she was in any way related to any of the occupants of the house. The jury were instructed that the defendant was liable to any one injured by a defect negligently suffered to be in the steps if the injured person was lawfully going to or from the house in the exercise of due care, having lawful business there, and if the steps were apparently designed and intended as a means of access to the house and of egress from it. In Plummer v. Dill, 31 N. E. Rep. 128, we consider at some length the question whether an owner of real estate fitted up for use in business is liable for its unsafe condition to one who goes there on business of his own not connected with the business actually or apparently carried on there; and it was held that such a person is a mere licensee, to whom the owner owes no further duty than to refrain from putting traps or pitfalls in his way, and from negligently doing injurious acts to his prejudice. We have now to consider how far an owner of a dwelling house is liable for its condition to one who comes there without express invitation, and not for the transaction of any kind of business carried on by any of the occupants; and also what should be deemed an implied invitation in a case of that kind. The defendant is liable to a visitor of the tenant for the condition of the steps if the tenant himself would have been liable had the steps been included in the tenement let, and not otherwise. It seems clear that one coming to a dwelling house to do business in which he alone is interested cannot expect a warmer welcome, or claim greater care for his safety, than if he went for the same purpose to the place of business of the occupant. In either case he is a mere licensee. In preparing a convenient entrance to his house one does not invite there peddlers, book agents, and others who come solely for their own convenience or profit. So far as they are concerned, his preparation of his premises for travel is an indifferent act. It has no such relation to them as it has to those who come to do business which he carries on there. The inducement, invitation, and implied representation of safety which he holds out to the latter are not for them, and the law imposes no affirmative obligation, and creates no active duty, to those who come as volunteers. He merely gives them free license and permission to use his premises, and impliedly agrees that he will not set traps for them, or wrongfully do anything to their injury. But in general, they must take his premises as they find them.

How far an implied invitation is held out under all conceivable circumstances, and whether an implied invitation to come as a guest for friendly intercourse can create a liability greater than that to an ordinary licensee, it is not easy to decide. No case in this country involving these questions has been brought to our attention. In Southcote v. Stanley, 1 Hurl. & N. 246, it is said, in substance, that the liability of an owner of a dwelling house to a visitor who is there on his express invitation is no greater than that to a licensee. The ground taken by Chief Baron Pollock and his associates seem to be that a guest, gratuitously enjoying hospitality by express invitatation at the house of his friend, must be presumed to have accepted the invitation with an understanding that he is to enjoy only such things as his host possesses, and that to such a guest the host owes no legal duty to furnish him with any better than he has for himself. In the late case of Inderman v. Dawes, L. R. 1 C. P. 274, Willes, J., treats a guest as a mere licensee, and

says that the protection in ordinary cases "depends upon the fact that the customer has come into the shop in pursuance of a tacit invitation given by the shopkeeper with a view to business which concerns himself. · · · The class to which a customer belongs includes persons who go, not as mere volunteers or licensees, or guests, or servants, or persons whose employment is such that danger may be considered as bargained for, but who go upon business which concerns the occupant, and by his invitation, express or implied." In Pollock on Torts, at page 417, the author says: "With regard to the person, one who acquires this right to safety by being upon the spot, or engaging in work on or about the property whose condition is in question, in the course of any business in which the occupier is interested." In Campbell on Negligence (2d ed.), at page 64, is the statement: "'Invitation,' therefor, in the technical sense of the word as employed in this class of cases, differs from 'invitation' in the ordinary sense, implying the relation between host and guest. In the case of host and guest it would be thought hard that the hospitality of the former should expose him to the responsibilities implied by business relations. A guest must take the premises as he finds them, with any risk owing to their disrepair, although the host is bound to warn his guest of any concealed danger upon the premises known to himself." It seems to be the rule in England that an ordinary guest in a dwelling house, although expressly invited, has no greater rights than a licensee. The case at bar does not require us to decide whether that rule should be applied in Massachusetts, for the plaintiff was not on the defendant's premises under an invitation, express or implied. We have already said that the same rule should be applied to one visiting a dwelling house out of curiosity or for his own convenience as if his visit were to a shop or other place of business. We do not doubt that such relations of friendship or of social intimacy may exist between individuals as to warrant a finding of an implied invitation to come as a friend at any time, and that one in such relations visiting his friend would have the same rights as if expressly invited, whatever those rights may be. Under the doctrines above stated the plaintiff is forced to contend that whenever a wake is held there is an implied invitation to every one of the same nationality and religion as the deceased person to attend it. Whatever ground there may be for holding that there is an invitation to relatives or near friends, there is no evidence to warrant the application of such a rule in this case; and there is no evidence, and there are no facts of common knowledge, to support it in reference to strangers. It may be true that strangers to the deceased person and to his family sometimes go to a dwelling house, and attend his wake or his funeral. But, in the absence of clear proof to support the contrary view, it must be held that such persons are mere licensees, and that the family of a deceased person, in having a funeral or a wake in their dwelling house, do not invite the whole world to come there. In the present case there was no evidence to warrant the submission to the jury of the question whether the plaintiff was on the defendant's premises under an implied invitation, and the ruling that the defendant's liability extended to all persons lawfully on the premises was too broad.

LIMITATION OF ACTION—INTERRUPTION OF STATUTE—RESIDENCE WITHOUT STATE—UNITED STATES SENATOR.—In Kerwin v. Sabin, decided by the Supreme Court of Minnesota, a defendant was held not to have resided out of the State so as to have interrupted the running of the statute of limitations; the circumstances being that, having an established residence and home in that State, he was elected to the United States senate, and during the sessions of congress he left his home in the occupancy of servants, and taking his family to Washington, kept house there in rented premises without intending to change his residence. In the intervals between the sessions of congress he returned to and occupied his home in Minnesota.

The court expressed the view that to suspend the running of the statute of limitations it would not be enough that the debtor, thus resident here, should depart from and remain for some time out of the State. "Departs from and resides out of the State," is the language of the statute. This necessarily imports, in the case of one having an established residence there, a change of residence, and the taking up of an actual residence, as distinguished from a temporary sojourn elsewhere. Venable v. Paulding, 19 Minn. 488, Gil. 422, and cases cited. "The defendant cannot fairly be said to have ceased to reside in Minnesota, or to have made Washington his place of residence, under the circumstances stated. Had he boarded with his family at an hotel or elsewhere in Washington during the sessions of congress, his home here being left as it was, and his actual occupancy of it maintained during the rest of the time, as was done, there could have been but little reason for a claim of a change of residence. But in view of the uncontradicted facts as to the reason of his being in Washington, and as to the continued maintenance and occupancy of his former home there, the fact of his keeping house with his family in rented premises in Washington during the sittings of congress is of little significance as respects the question involved. His residence here in the ordinary sense of the term, was not relinquished, and a new residence acquired in Washington. His former home continued to be 'the house of his usual abode,' and by the terms of our statute (chapter 66, § 59, Gen. St. 1878), under the circumstances shown by the evidence, a summons might have been served by leaving a copy there, and an action be thereby effectually commenced against him."

CRIMINAL LAW — FRAUD IN OBTAINING BOARD.—An act of the Missouri legislature provides that "every person who shall obtain board or lodging in any hotel * * * by means of any trick or deception, or false or fraudulent representation, * * * and shall fail or refuse to pay therefor, shall be held to have obtained the same with intent to cheat and defraud such hotel-keeper, * * * and shall be deemed guilty of a misdemeanor." A woman went to an hotel and was assigned a room, where she remained for two days. She then sent for the manager and told him she expected a remittance in about two weeks. The manager told her he would accept the check she expected in payment for her board. He did not inquire for the name of the person from whom the check was to come. It was held, in State v. Kinsley, 18 S. W. Rep. 974, that the woman could not be convicted under the above statute of obtaining board by a trick or false pretense. The court says, *inter alia:*

She certainly was guilty of no trick by means of which she obtained the board. Her statement that she was an artist was true; and her statement that she expected a remittance in two weeks was not proved to be false, and, if it had been, it would have been insufficient to justify a verdict of guilty of the crime charged. We take it that, beyond question, the same rules of interpretation must be applied to the act under which defendant is prosecuted as are applied to section 3564, Rev. Stat. 1889, which defines the crime of obtaining money or property by false pretenses. Speaking of this crime, Judge Adams, in State v. Evers, 49 Mo. 542, says: "The essence of the crime of obtaining money or property by false pretenses is that the false pretense should be of a past event, or of a fact having a present existence, and not of something to happen in the future." And this doctrine was reasserted by this court in State v. De Lay, 93 Mo. 98, 5 S. W. Rep. 607. But not only must the false pretense or representation be of a past event or an existing fact, but the board must be obtained by means of it. It must be made for the purpose of obtaining the board, and the hotel or boarding-house keeper must believe it, and, in reliance on it, furnish the board. See the Evers and De Lay Cases, above cited. We do not think it can be fairly inferred from the evidence that defendant in this case stated to the manager of the Southern Hotel that she expected a remittance for the purpose of obtaining board. . . . She could have continued there for one week, at least, without saying a word about payment of the bills. Persons intending to perpetrate tricks, or obtain money, property or other valuable thing by means of a false pretense, do not ordinarily proceed in this way. They usually defer their false statements till they are forced to the wall. Here defendant made the statements voluntarily. She said she expected a remittance. She testified she did expect it, and there was no evidence whatever that she did not. But conceding that this statement was false, *i. e.*, she did not expect a remittance, still she did not obtain the board by means of it, for it is perfectly manifest from the evidence that the manager of the hotel did not rely on it when he consented to extend the time of payment of her board bill. It is inconceivable that an ordinary business man would give credit on the faith of such a statement without inquiring who the party is who is to make the remittance, and that is what the manager of the hotel in this case did. Hence all the elements of the crime charged against defendant are lacking. Her representation, if false at all, was of a future event, and the manager of the hotel did not credit her for board on the faith of it."

DURESS—COMPOUNDING FELONY—RECLAMATION OF CONVERTED PROPERTY. — In Cass County Bank v. Brickner, the Supreme Court of Nebraska hold that the owner of the property stolen or wrongfully taken may reclaim the same, or receive compensation for the injury sustained, and this compensation may be by promissory note signed by sureties; and, unless there is an agreement on his part to forbear the further prosecution of the case, or to suppress some of the evidence, the defense of compounding a felony will not be available against the note. Maxwell, C. J., says:

Section 177 of the Criminal Code provides: "If any person shall take money, goods, chattels, lands, or other reward, or promise thereof, to compound any criminal offense, such person shall be fined in double the sum or value of the thing agreed for or taken, but no person shall be debarred from taking his goods or property from the thief or felon, or receiving compensation for the private injury occasioned by the commission of any such criminal offense." In School Dist. v. Collins (Dak.), 41 N. W. Rep. 466, the defense was that the note was given to compound a felony. The court says: "In defenses of this kind, where it is sought to invalidate a written contract by parol evidence it should be made to clearly appear that the arrangement was in contravention of public policy. Vague and indefinite statements are not sufficient. The understanding or agreement relied on must be positive and certain; entered into and relied upon by both parties. Says Judge Caldwell in Swann v. Swann, 21 Fed. Rep. 299: "No court ought to refuse its aid to enforce a contract on doubtful and uncertain grounds. The burden is on the defendant to show that its enforcement would be in violation of the settled public policy of this State, or injurious to the morals of its people. Vague surmises and flippant assertions as to what is the public policy of the State, or what would be shocking to the moral sense of its people, are not to be indulged in." Says the Lord Chief Justice in Walsh v. Fussell, 6 Bing. 163: "To hold a contract void on the ground of its impolicy or inconvenience, we ought to be clearly satisfied that the performance of it would be necessarily attended with injury or inconvenience to the public." In Malli v. Willett, 57 Iowa, 705, 11 N. W. Rep. 661, one witness being asked what the consideration was, said that A wanted to "prosecute" B for adultery with his wife, and the note "was executed so as not to have any fuss with him about it,—to settle up that matter." The court held that the design to compound a criminal prosecution did not clearly appear, and that a verdict should

have been for the plaintiffs. Says the Chief Justice: "An agreement is not void on this ground unless it expressly and unquestionably contravenes public policy, and is manifestly injurious to the interest of the State." Iowa likens it to declaring a law unconstitutional and void. Says Judge Cole in Richmond v. Railway Co., 26 Iowa, 202: "The power of courts to declare a contract void for being in contravention of sound public policy is a very delicate and undefined power, and, like the power to declare a statute unconstitutional, should be exercised only in cases free from doubt." In Kellogg v. Larkin, 3 Pin. 123, the court says: "Before a court should determine a contract which has been entered into in good faith, stipulating for nothing that is *malum in se*, . . . to be void as contravening the policy of the State, it should be satisfied that the advantage to accrue to the public for so holding is certain and substantial, not theoretical or problematical. He is the safest magistrate who is more watchful over the rights of the individual than over the convenience of the public, as that is the best government which guards more vigilantly the freedom of the subject than the rights of the State." In Johnston v. Allen, 22 Fla. 224, it was held that, "where a valid acceptance is transferred by the payee to a person under arrest for embezzlement, to enable him to effect a compromise, and is given by him to the persons from whom he has embezzled, to secure the payment of whatever sum might be due from him, the acceptance is not thereby made invalid, as given to compound a felony, unless, in consideration thereof, the persons from whom he embezzled agreed to abandon the prosecution against him; and even then the liability of the acceptor is not affected if he was not privy to the agreement." In Barrett v. Weber, 125 N. Y. 18, 25 N. E. Rep. 1068, it was held that a mortgage given by a married woman to secure the payment of goods stolen by her husband is not void as given to compound felony, in the absence of any promise on the part of the mortgagees to forbear prosecution for their crime, or to suppress evidence tending to prove it; and in Schultz v. Catlin (Wis.), 47 N. W. Rep. 946, where the felony was denied by the defendant, it was held a note given for the debt could not be avoided by the defense that it was given to compound a felony. In order to establish the defense of compounding a felony it must appear that there was an agreement not to prosecute the case, or to suppress evidence tending to prove it. The owner of goods stolen has a right to receive compensation therefor. The person accused may be anxious to make restitution, but be unable to pay at once, and hence must give security, either personally or through his friends; and the mere fact that he is liable to be punished for the crime will not invalidate the obligation. This rule was established in Mundy v. Whittemore, 15 Neb. 647, 19 N. W. Rep. 694, and is believed to be sound law.

NEGOTIABLE PAPER—FRAUDULENT ISSUE—BONA FIDE HOLDER.—In Breckenridge v. Lewis, the Supreme Judicial Court of Maine recently rendered a decision which is a happy illustration of the rule that where one of two innocent persons must suffer loss, it must be borne by him whose act or want of foresight gave occasion for it. It was there held that one who intrusts his signature to another for commercial use, that is, to have some business obligation written over it, becomes holden upon a negotiable promissory note fraudulently so written by the person so intrusted with it, and negotiated to an innocent holder. Said Haskell, J., in delivering the opinion of the court:

The note was claimed to have been fraudulently written by the payee, Morse, over the defendant's name, signed on blank paper, to enable Morse to write an order on a savings bank, where defendant had funds, as the necessities of her business intrusted to Morse might require; and the court ruled that contention no defense.

It is contended that defendant's negligence in the premises should have been submitted to the jury; but that was not necessary, inasmuch as the question of negligence, as matter of fact, need not be considered an element required to charge the defendant under the facts of this case. The payee of the note, Morse, was intrusted with defendant's name in blank to draw funds necessary to meet the calls of her business, intrusted to the care of her agent, Morse. He was authorized to write an order above defendant's signature, but instead of so doing he wrote a promissory note, and obtained the amount of it from a stranger. He fraudulently used his apparent authority for his own gain instead of his principal's. His relation to his principal is the same as if he had procured the money on an order that he was authorized to write, and then embezzled it. The defendant may be held under the plain rules of agency. By intrusting her signature to her agent for use, the defendant gave him an apparent authority to use it in the manner he did. The limited authority, only known to themselves, cannot be held to reach strangers, who neither knew, nor had means of knowing, of that secret limitation. The note, when presented for discount, gave no suggestion of infirmity. The signature was genuine, and apparently the payee, defendant's agent, who indorsed it, had authority to negotiate it. It was apparently the defendant's genuine promise and she, by intrusting her name to her agent for commercial purposes, held him out as an agent with general powers in relation to it. She clothed him apparent authority, and cannot now deny it to the loss of any person who innocently relied upon it. It is better that she bear the consequences of misplaced confidence than that an equally innocent person shall suffer. She selected the agent; the plaintiff did not. The apparent authority of the agent makes his act her own, in this case, as effectually as if her authority had been real. That is the doctrine of Young v. Grote, 4 Bing. 253, and of Putnam v. Sullivan, 4 Mass. 45, cited with approval in Wade v. Withington, 1 Allen, 562, and in Bank v. Stowell, 123 Mass. 198, 199, where all the cases, both English and American are reviewed. See, also, Redlon v. Churchill, 73 Me. 146.

The same doctrine is held in the Earle of Sheffield's Case, L. R. 13 App. Case 333, (1888). The earl authorized his agent to procure a loan for a limited amount, and transferred to him in blank certain stocks, and delivered to him certain bonds for the purpose. The agent procured the loan, and delivered the securities to a broker, who in turn pledged them for his entire indebtedness to certain banks. The earl sought to redeem, but the banks (the broker being in solvent) refused him, relying upon their legal title to the securities. At the first trial redemption was denied upon the ground that the agent was master of the stocks, and had actual authority to convey them. On appeal it was held that the agent had not actual au-

thority to dispose of the stocks as he pleased; that his actual authority was limited to the amount of the loan authorized; but that the banks became owners of the stocks and bonds, having acquired the legal title, without notice of infirmity, through an agent who apparently had full authority to give it. On final appeal, the lords approved the doctrine of the court of appeals, that if the banks as purchasers of the stock took the legal title from an agent having apparent authority to give it, without notice of his actual limited authority, such title would become absolute; but reversed the judgment of the court of appeals, for the reason that the banks had actual notice of the limited authority of the broker over the stocks, and allowed the earl to redeem. See, also, Bank v. Cady, L. R. 15 App. Cas. 267.

It is the same doctrine held where the signature is placed to a blank instrument to be filled by the person intrusted with it, only the blank is a patent limitation of the agent's authority. He may fill the blank as may suit him best, and the principal will be held. The blank form carries with it an implied authority to complete it, but not to alter it. Russell v. Langstaffe, 2 Doug. 514; Violett v. Patton, 5 Cranch, 142; Bank v. Neal, 22 How. 96; Bank v. Kimball, 10 Cush. 373; Angle v. Insurance Co., 92 U. S. 330; Abbott v. Rose, 62 Me. 194, approved in Kellogg v. Curtis, 65 Me. 61.

TORT OF LUNATIC—LIABILITY FOR DEATH BY WRONGFUL ACT.—The question of the liability of a lunatic in damages for causing the death of another by an act which would be felonious except for his insanity was recently discussed by the Supreme Court of New Hampshire in the case of Jewell v. Colby. Said Bingham, J.:

The question presented is whether the defendant is liable for his torts, and especially those committed when insane. The executor or administrator of a deceased person whose death was caused by the wrongful act or neglect of another may recover damages of the wrong-doer for the injury to the deceased person and his estate caused by such act, although the death in law may be a felony. The cause of action survives, and may be prosecuted by an executor or administrator, the same as by an injured person when death does not ensue. Laws 1887, ch. 71; French v. Flannel Co., 20 Atl. Rep. 363 (Hillsborough, March 14, 1890). Generally, an insane person is liable for his torts to the extent of compensation for the actual loss sustained by the injured party, but when the wrong lies in the intent, and the intent is an impossibility, there can be no recovery. Cooley Torts, 103; Sedg. Dam. (5th ed.) 456, note 1; Hil. Torts, 228, § 4; Bank v. Moore, 78 Pa. St. 407; Jackson v. King, 15 Amer. Dec. note, 368; Morain v. Devlin, 132 Mass. 87; Bullock v. Babcock, 3 Wend. 391, 393. There may be an exception, however, in the case of an inevitable accident. Brown v. Collins, 52 N. H. 442, 451. On the facts stated in the case, evidence of the defendant's insanity is not admissible to defeat the right to recover, or at all, unless the plaintiff claims punitive, exemplary, or a greater sum in damages than compensation for the actual loss sustained, and the action may be maintained. If greater damages are sought on account of the intent or motive of the defendant, insanity is a good answer to the same, as an insane person has no will or motive, and the measure of damages is compensation for the actual loss. Krom v. Schoonmaker, 3 Barb. 647.

ARE STATUTES OF LIMITATIONS STATUTES OF EXTINGUISHMENT?

A good example of the exception to the rule that the statute of limitations of the forum, and not that of the *loci contractus*, can be pleaded, mentioned in a hasty criticism of mine of a few weeks since, may be found provided by § 16 of ch. 66, General Statutes of Minnesota of 1878, which reads as follows: "When a cause of action has arisen in a State or territory out of this State, or in a foreign country, and by the laws thereof an action thereon cannot there be maintained by reason of the lapse of time, an action thereon cannot be maintained in this State, except in favor of a citizen thereof who has had the cause of action from the time it accrued."[1] Similar statutes, many of which have been passed during recent years, may be found on the statute books of nearly all of the States. While such statutes profess to deprive the creditor of all remedy in the State on contracts that are barred in another State, and so far it is the law of the forum which is to be pleaded, still it would be necessary to plead the statute of limitations of the *loci contractus* to show that it was barred in that place, in order to bring it within the purview of the statute of the forum. The statute of the forum really gives the right to plead the statute of limitations of the *loci contractus*.

Statutes of Prescription.—In Billings v. Hall,[2] decided in 1857, the Supreme Court of California say: "The cases cited from Louisiana and Texas arose under the doctrine of prescription which obtained in those States, and which differs materially from statutes of limitations. Prescription is defined by civilians to be a 'right by which a mere possessory acquires the property of a thing which he possesses by the continuance of his possession during the time fixed by law.' The prescription by which debts are released is a peremptory and perpetual bar to every species of action, real or personal, when the creditor has been silent for a certain time without urging his claim. So that the difference between statutes of limitation, as they are known to courts of common law, and the law of prescription consists in this: That the one confers a right and the other takes

[1] Fletcher v. Spaulding, 9 Minn. 54 (64); Hoyte v. McNeil, 13 Minn. 390.

[2] 7 Cal. 1.

away a remedy. Having thus, as we conceive, successfully demonstrated that acts of limitation affect the remedy and not the right, and that they have no retrospect beyond their passage, we will proceed," etc. Winburn v. Cochran,[3] presumably one of the cases cited by counsel in Billings v. Hall,[4] was an action for the recovery of a slave who had been held by adverse possession until the true or former owner could not recover his property by action by reason of the statute bar. The slave was clandestinely taken by his former owner, and the action was brought by the person in whose favor the statute had run. It was contended by the defendant that the statute did not give a right, that it only interposed a bar to recovery by action, and that as he had obtained possession of his property without action the statute could not affect him; he obtained his right without invoking a remedy which was barred. The court say: "Strange mode of reasoning! But, strange as it is, it at one time received judicial countenance in the courts where the common law formed the body of jurisprudence. Their maxim was that the statute could be used as a shield of defense but not as a sword to assail. This doctrine has, however, been overruled, so far as the statute applies to personal property or property capable of being moved from place to place. It has been repeatedly so held in Virginia, North Carolina, South Carolina, Tennessee, Kentucky and Louisiana. This has always been the rule of the civil law." The court, in Newcombe v. J. W. &. W. R. Leavitt,[5] decided in 1853, without making the distinction between statutes of limitations and prescription that the California courts did in the cases cited, say: "The statutes of limitation in all the States of this Union, so far as it affects rights to personal chattels, acts not merely upon the remedies for their recovery, but upon the title itself."[6] The Supreme Court of Illinois, in McCagget v. Heacock,[7] which was an action for the recovery of real property, held that the statute does not confer title on a party, but can be used as a shield to protect him in possession; modifying a former decision of that court which held that the possessor who has conformed to its conditions is the "true owner." But the same court, in McDuffee v. Sinnott,[8] held, in a similar action, that "the title acquired by the bar may be asserted against all the world, even when out of possession." The Supreme Court of Texas, in an action for the recovery of land in 1874, said: "We hold that statutes of limitations have reference to the remedy, and do not in any sense confer a vested right. We have also held that the land laws conferring title by prescription are statutes of limitations." That is, the court held that the land laws of prescription which assumed to affect the title only affected the remedy, consequently they were statutes of limitations. A horse was held adversely for six years and two months in the State of Oregon under the six-year statute bar of that State, and was sold to the plaintiff, who took it into the State of Washington, where it was claimed by its former owner and was surrendered to him by plaintiff. In an action on the warranty it was held that the statute of Oregon did not act upon the title but only upon the remedy, and it could not avail the plaintiff in the State of Washington, hence he was entitled to recover against the defendant.[9] Statutes of limitations relate to the remedies which are furnished in the courts.[10] The only effect of a statute of limitation is as an armor of defense.[11]

Many cases might be cited to prove that statutes of limitations were not designed to affect rights, only remedies; but it would be a waste of space to cite them, so far as the purpose of this paper is concerned. I have, it seems to me, shown by all principal authority on the point, that perhaps at first glance would seem to conclusively show that statutes of extinguishment are valid, one thing, viz.: that statutes of limitations are not statutes of extinguishment according to the well-recognized legal definition of the phrase; but

[3] 9 Tex. 123.

[4] *Supra.*

[5] 22 Ala. 631.

[6] The rights acquired under such statutes in one State were recognized in another in the following cases: Fears v. Admrs. Ly Kes, 35 Miss. 633; Shubly v. Guy, 11 Wheat. 362; Mosley v. Williams, 5 How. 523—all decided prior to 1858, and in which personal property was the subject of the action.

[7] 42 Ill. 153.

[8] 119 Ill. 449.

[9] Goodwin v. Morris, 9 Oreg. 322.

[10] Sturges v. Crownenshield, 4 Wheat. 122; Ogden v. Saunders, 12 Wheat. 349.

[11] 3 Wash. on Real Property, P. P. 52, star page 449, § 2; Angell on Limitations (2d ed.), 397; Cooley on Taxation, 381, star page 383.

on the other hand, statutes of prescription are statutes of extinguishment. The former takes away the remedy only, the latter the cause of action itself. There can be no remedy to take away where there is no cause of action. It will be observed that all of the cases cited, wherein the civil-law doctrine of prescription was adhered to, with the exception of McDuffee v. Sinnott,[12] which was an action brought in the State where the statute bar had operated, where the party had in his favor all the rules of evidence or presumptions that the State had made in regard to possession, which might not avail him in another jurisdiction, for they pertain to the remedy only, were decided before the adoption of the fourteenth amendment to the federal constitution, which took effect July 28th, 1868, and provided that "no State shall deprive a person of life, liberty or property without due process of law," when the State was supreme so far as any law affecting property that the legislature might pass, except as it was restricted by its own constitution; and few, if any, of the States mentioned were restricted at the time the cases herein cited were decided, and in not one was constitution mentioned, except in Sturgess v. Crowenshield and Ogden v. Saunders,[13] in which cases other questions were under consideration, and statutes of limitations were spoken of as an illustration merely. Of course, ever since the adoption of the federal constitution, States have been restricted from impairing the obligation of contracts, and a statute that would assume to extinguish a cause of action on contract at the expiration of a certain time might not impair in a legal sense the contract, and if not, it would be a valid law; when an act that assumed to annihilate title or take the title of one man and place it in another might be invalid. These questions will be considered later.

E. C. Betts.

Minneapolis, Minn.

[12] *Supra.*
[13] *Supra.*

HUSBAND AND WIFE—AGENCY—MECHANIC'S LIEN.

HOFFMAN V. McFADDEN.

Supreme Court of Arkansas, May 14, 1892.

1. The authority of a husband to contract as his wife's agent so as to subject her property to a mechanic's lien cannot be implied from the wife's knowledge that he is causing her land to be improved, nor from her mere consent thereto.

2. Nor is the presumption of such authority created by Mansf. Dig. § 4637, which provides that where a married woman permits her husband to control and manage her separate property the presumption shall be that he is acting as her agent, since this provision is simply for the protection of the wife's property from the husband's debts.

3. Where a contract for the improvement of the wife's property was made with her husband, who purchased all the materials and paid for all the labor, and, although the wife witnessed the progress of the work, and gave some directions to the carpenters, she objected to improvement, and was not consulted about the contract therefor, and had no knowledge of its terms, a mechanic's lien cannot be sustained against the wife's property on the ground that the contract was made with the owner's agent, as provided by Mansf. Dig. § 4402.

Mansfield, J.: This action was brought to enforce a lien claimed by the plaintiff, McFadden, upon a house and lot belonging to the defendant, Mrs. A. C. Hoffman, for the price of materials furnished by the plaintiff, and used in the erection of the house. The lot is the defendant's separate property, and the complaint alleges that the materials were purchased by Ed Hoffman, her husband, and that in obtaining them he acted as her agent. The answer denies that the husband of the defendant was her agent, or that he purchased the materials for her, or with her consent; and it alleges that the house was erected against her express objection. The action was brought at law, but, upon the plaintiff's motion, was transferred to the equity docket. The decree of the chancellor was in favor of the plaintiff, and the defendant has appealed.

Under the statute of this State creating a lien for work done or materials furnished in making improvements on real property, the lien exists only where the labor is performed or the materials supplied under a contract, express or implied, with the owner of the land improved, or with "his agent, trustee, contractor, or subcontractor." Mansf. Dig. § 4402. The terms of the act import no intention to create a lien in the absence of such contract, and there is no decision of this court giving the statute, by construction, a wider meaning than its language implies. Rogers v. Phillips, 8 Ark. 366. The views as to the origin of a material-man's lien, expressed by Judge Walker in Cohn v. Hager, 30 Ark. 25, and referred to in the argument, go no further than to indicate an opinion that the lien may be asserted although the materials are not furnished under a contract with the land-owner, if they are supplied under an agreement with his contractor. In Rogers v. Phillips, 8 Ark. 366, it was decided that a married woman could not enter into a contract such as would subject her property to a mechanic's lien, but since the time of that decision a married woman has been empowered by the laws of this State to hold, devise, bequeath, or convey her

property, real and personal, "the same as if she were a *feme sole*." (Const. 1874, art. 9, § 7; Mansf. Dig. ch. 104); and it has been held that while the constitutional and statutory provisions by which this change has been effected do not expressly enlarge a married woman's capacity to contract generally, the statute does, by implication, enable her to charge her separate estate, (Walker v. Jessup, 43 Ark. 163). Under existing laws her power to convey her real property is unlimited, and it is well settled that she may mortgage it for the payment of her husband's debts. Scott v. Ward, 35 Ark. 480. We think she may also enter into a contract for its improvement, and that such contract may be made the basis of a mechanic's lien for labor or materials. 2 Jones, Liens, 1260; Hauptman v. Catlin, 20 N. Y. 248; Fowler v. Seaman, 40 N. Y. 592. As she may contract personally for the improvement of her estate, she can of course do so by an authorized agent; and her husband may become her agent for that purpose. But his authority to make such contract will not be implied from the marital relation, nor from the mere fact that he occupies or manages and controls her real estate. 2 Bish. Mar. Wom. § 396; 2 Jones, Liens, § 1264; Mechem Ag. 63; Rudd v. Peters, 41 Ark. 177. The laws of this State declare that the property of a married woman "shall not be subject to the debt of her husband." Const. art. 9, § 7; Mansf. Dig. § 4624. This declaration applies as well to a debt which he contracts for the improvement of her estate as to any other. In some of the States a mechanic's lien may be asserted on property which has been improved with the knowledge and consent of the owner, but without any contract on his part; but our statute, as we have seen, requires a contract with the owner; and this cannot be implied from the knowledge of the wife that her husband is causing her land to be improved, nor from her mere consent that such improvement may be made under an agreement not made with him as her agent. If he contracts as her agent, it must appear that he was authorized to do so; and his authority cannot be derived by implication from circumstances which ordinarily owe their existence solely to the marriage relation. 2 Jones, Liens, § 1265; Gilman v. Disbrow, 45 Conn. 563; Phil. Mech. Liens, §§ 105, 106, and cases cited; Conway v. Crook, 66 Md. 291; Fetter v. Wilson, 12 B. Mon. 90; Planing Mill Co. v. Brundage, 25 Mo. App. 268; Jones v. Walker, 63 N. Y. 612; 2 Bish. Mar. Wom. § 396; Knott v. Carpenter, 3 Head, 542. A married woman may, by silently acquiescing in the contract of one who, to her knowledge, assumes to act as her agent, be estopped to deny the agency; and where the husband contracts for the improvement of his wife's property with one who believes him to be the owner, and the wife, knowing this fact, permits the work to be done without disclosing her right, it has been held that she will be estopped to set up her title in defense of an action to enforce the contractor's lien. Bigelow, Estop. 602, 603; 2 Jones, Liens, 1264. But in this case we find in the conduct of the defendant no element of estoppel. Her husband did not assume to act as her agent, and the plaintiff knew that she was the owner of the lot on which the house was erected. It is argued that, under section 4637 of the Digest, the husband of the defendant is presumed to have contracted as her agent. The section referred to is taken from the act of December 15, 1875, and is as follows: "The fact that a married woman permits her husband to have the custody, control, and management of her separate property shall not, of itself, be sufficient evidence that she has relinquished her title to said property, but in such case the presumption shall be that the husband is acting as the agent or trustee of his wife." There is much in the phraseology and provisions of this act to justify the question whether any part of it applies to real property, (Rudd v. Peters, 41 Ark. 184); but the section quoted has been construed to mean that the husband shall not acquire title by the wife's permission to use, control, or manage her property, (Rudd v. Peters, *supra*). The presumption it raises is for the protection of the wife's property against seizure for the husband's debts. It makes the latter's control or management of the property evidence only of an agency for that purpose, and not of any power to bind the property by contract. If the presumption of the statute could be resorted to for the purpose of showing the authority to make a contract by virtue of which the wife's property may be subjected to a lien, it might become an instrument for depriving her of the rights it was designed to protect. The burden of proof, then, was on the plaintiff, to establish the agency alleged in his complaint.

The building erected was located only about 40 feet from a house occupied by the defendant and her husband. She witnessed the progress of the work, and gave some directions to the carpenters as to the manner of executing it. Her husband had expressed a desire to have the building so constructed that she would be pleased with it, and one of the witnesses testified that "she was present every day, and had the work done to suit her." But it is not shown that she manifested any greater interest in the improvement than a wife would usually take in the building of a house upon land belonging to her husband, and put up so near to the place of her residence; nor does it appear that there was any greater deference to her wishes in the plan of the house than is commonly shown by a husband in causing a similar work to be done at his own expense. The contract for the work was made with the husband and the labor of the carpenters was all paid for by him. All the materials purchased from the plaintiff and others were procured on the husband's order, and for aught that appears to the contrary they were sold entirely on his personal credit. The defendant testified that she objected to the erection of the house for reasons which she states; and in this respect her testimony is sup-

ported by that of two other witnesses. She also states that her husband was not authorized to act as her agent, and that she was not consulted about the contract for the improvement, and had no knowledge of its terms. Our opinion is that on the proof adduced the plaintiff was entitled to no relief. The judgment will therefore be reversed, and the complaint dismissed.

NOTE.—The opinion of the court in the principal case is but an affirmance of a principle of law now firmly established by repeated decisions of courts of the highest authority. It is, in fact, the logical and legitimate construction of a statute which might operate, under an improper construction, to deny to married women property rights which recent legislation has conferred upon them. One of the leading cases upon this subject is Gilman v. Disbrow, 45 Conn. 563. This is a forcible and well considered case and has been almost uniformly followed. Flannery v. Rohrmayer, 46 Conn. 558; Little v. Vredenburg, 16 Bradw. 189; Johnson v. Tutewiler, 35 Ind. 353; Spinning v. Blackburn, 13 Ohio St. 131; Steinman v. Henderson, 94 Pa. St. 313; Fetter v. Wilson, 12 B. Mon. 90; Warren v. Smith, 44 Tex. 245; Wendt v. Martin, 89 Ill. 139; Myer v. Broadwell, 83 Mo. 571. In this case Pardee J. says: "As a prerequisite to the lien, the wife should herself either have made the contract, or have consented to the performance of the work after information from the builders that it was not to be done upon the personal credit of the husband, nor upon the credit of life estate, but upon the credit of her fee, and that this last would be subjected to a lien in default of payment." This decision seems so clearly consistent with separate property rights of married women that we should hardly expect to find any conflicting decisions. There is authority, however, to the effect that if the husband, with the knowledge and consent of his wife, contracts for the improvement, of the latter's separate estate, a lien on such property will be sustained. McCormick v. Lawton, 3 Neb. 449; Bradford v. Peterson, 30 Neb. 96; Scales v. Paine, 13 Neb. 521; Howell v. Hathaway, 28 Neb. 807. It is difficult to reconcile this decision with Gilman v. Disbrow, *supra*, and the numerous cases following it. It has frequently been held that knowledge by the wife of the improvements would not alone support a lien on her separate property. Lauer v. Bendow, 43 Wis. 556; Hughes v. Auslyn, 7 Mo. App. 400; Garnett v. Berry, 3 Mo. App. 197; Geary v. Hennessy, 9 Bradw. 17; Capp v. Stewart, 38 Ind. 479; Barker v. Berry, 8 Mo. App. 446; Bliss v. Patten, 5 R. I. 376. Many of the cases hold that she may even direct the work and approve of it and escape liability. Conway v. Crook, 66 Md. 290; Wright v. Hood, 49 Wis. 235; Willard v. Magoon, 30 Mich. 273; Johnson v. Parker, 27 N. J. L. 239. It has also been held that the wife may join her husband in a contract for the improvement of her land and still a lien will not attach to her interest; but the husband's estate in the land as tenant by the curtesy initiate would be subject to the lien. Kirby v. Tead, 13 Met. 149.

In an Indiana case, however, it was held that if the wife authorizes the husband to make the improvements, her property is bound, although she did not, in fact, intend to charge her separate property. Jones v. Pothast, 72 Ind. 158; and see Shilling v. Templeton, 66 Ind. 585. Of course, it is entirely competent for the wife to incumber her estate by mechanic's lien or otherwise, and she may do this as well by agent as in person. Vail v. Meyer, 71 Ind. 159; Burdick v. Moon, 24 Iowa, 418; Kidd v. Wilson, 23 Iowa, 464. In a large majority of the cases the relation of principal and agent is relied upon to create a liability on the part of the wife; but the courts require strict proof of such relation and no liability will be created by implication. Rowell v. Klein, 44 Ind. 290; Planing Mill Co. v Brundage, 25 Mo. App. 268; Eystra v. Capella, 61 Mo. 578; Miller v. Hollingsworth, 33 Iowa, 224; Price v. Seydel, 46 Iowa, 696; Wright v. Hood, 49 Wis. 235; Hughes v. Peters, 1 Coldw. 67; Jones v. Walker, 63 N. Y. 612; Bliss v. Patten, 5 R. I. 376. In Massachusetts it has been decided that proof that the husband had the general management of his wife's property, and that after he had contracted for improvements she gave directions regarding the work, would justify a verdict that he had been acting as the agent of the wife. Wheaton v. Trimble, 145 Mass. 345. In Thompson v. Shepard, 85 Ind. 352, the wife mortgaged property owned by her in order to raise money with which to make improvements. The husband used the money in making the improvements with the wife's consent. It was held that he acted as her agent and a lien on her property was accordingly sustained.

The property of the wife is sometimes bound on the ground of estoppel. In an Illinois case the deed under which the wife held was dated June 1, 1872, and the contract between her husband and the material-men, under which the improvement was made, was dated July 24, following. The wife retained possession of the deed till July 28, when it was filed for record. She thus permitted her husband to hold himself out as the owner of the premises. In addition to this she witnessed the progress of the work. The court held she was estopped to assert her rights in exclusion of the right acquired by the contractor under the contract with the husband. Anderson v. Armstead, 69 Ill. 452; see also, McNichols v. Kettner, 22 Ill. App. 493. The decision of the majority of the same court in another case seems to conflict somewhat with the general current of authority on this question. The dissenting opinion of Walker, C. J., and McAllister, J., by the latter, is a very forcible exposition of the legal *status* of a married woman's separate property in a proceeding for a lien. In this case the wife conveyed her real estate to a trustee in trust for herself during the joint lives of herself and husband. It was provided that the property might be improved, and that the husband and wife, acting in concurrence with the trustee, should have the general management of the premises. The husband, in his own name and with the knowledge of his wife and trustee, entered into contracts for the improvement of the property. It was held that the material-men were entitled to a lien upon the property. The prevailing opinion virtually holds that the trustee became a party to the contract, so far as it was necessary for him to do so, by his silence. The dissenting opinion holds that the trustee should have been a party to the contract, and in no other way could he be divested of the title to the property. It is also held that the mere silence or acquiescence of the trustee and wife could not operate to charge the estate, as the trustee was under no duty to speak. The dissenting opinion, it would seem, from a careful examination of the authorities, adopts the construction of the statute as announced by a large majority of the courts which have passed upon the question. Taylor v. Gilsdorf, 74 Ill. 354.

There is much apparent conflict among the authorities arising out of the differences in the statutes which prevail in the different States. Some of the statutes provide that the consent of the owner of land to the making of the improvements thereon is suffi-

cient to create a lien. Under such a statute in N. Y. it was so held. Otis v. Dodd, 90 N. Y. 336; Burkitt v. Harper, 79 N. Y. 273; Husted v. Mathes, 77 N. Y. 388. Under another statute in the same State, providing for a lien under a contract with the owner, it was held consent alone would not establish a lien. Jones v. Walker, 63 N. Y. 612; Cornell v. Barney, 94 N. Y. 394; Ziegler v. Galvin, 45 Hun, 44. Of course, ordinarily, statutes providing for mechanic's liens are strictly construed. Associates of Jersey v. Davidson, 5 Dutch. 415. A person claiming under them must show a substantial compliance with all requirements to avail himself of its benefits. Williams v. Tearney, 8 S. & R. 58; Ellison v. Jackson Water Co., 12 Cal. 542; Spencer v. Barnett, 35 N. Y. 96. We should look, therefore, primarily to the statute of a State for the solution of questions arising as to rights and liabilities under such laws.

Chicago. JOHN C. WILSON.

CORRESPONDENCE.

COLORADO WATER RIGHTS LAW.

To the Editor of the Central Law Journal:

In your issue No. 9 of Vol. 35, p. 163, you err in stating that the Supreme Court of Colorado decided the case of Wyatt v. Larimer and Weld Irr. Co., 29 Pac. Rep. 906. The decision referred to was rendered by the court of appeals, and is, in my judgment, reviewable by the supreme court. The main point decided is, that a company, formed for the purpose of diverting the unappropriated waters of the natural streams, and, by means of its ditch, supplying the same for irrigation purposes to the tillers of the land lying thereunder, becomes the actual owner of the water by it diverted, subject to the reversion of so much as is not beneficially applied. In other words, the court holds (Bissell, J., dissenting) that the ditch company is the "appropriator" contemplated by the constitution and statutes, at least as against those consumers of water from the ditch who had not appropriations prior to the diversion by the company. In this decision the court of appeals has refused to follow the supreme court, which has held that the ditch company does not become the proprietor of the water diverted by it, and that such diversion would be even unlawful except for the subsequent application of the water to a beneficial use by the consumer who is the principal. In other words, the supreme court has always held that the tiller of the soil, in such a case, is the "appropriator," and not the ditch company. Wheeler v. Northern Colo. Irr. Co., 10 Colo. 582; Farmers' H. L. C. & R. Co. v. Southworth, 13 Colo. 111. If the consumer, or tiller of the soil, be the appropriator and owner of the use of the water, the ditch company will be entitled, under the Wheeler and Southworth cases, *supra*, to compensation only for the use of its water-way for conveying the water to him, whether it be a common carrier strictly or not. And this compensation will be subject to regulation under the statutes. If the ditch company be the appropriator and owner of the water, as decided in the Wyatt case, a different set of rights must be recognized. It has a salable interest in the water; its ditch will be much more valuable and subject to less regulation by the courts. The courts agree that the "appropriator" has a proprietary interest in the water appropriated, with all the rights such an interest involves, as, for example, the right to change the point of diversion and place of application to a beneficial use, but they differ in their conclusions as to who that "appropriator" is. In the language of Chief Justice Helm, in the Southworth case: "The perplexing problem of water rights . . . is unsurpassed in difficulty by any other subject known to our legislation or jurisprudence." And it will take much litigation and legislation to settle that branch of the law in Colorado. ALBERT E. GRIER.

HUMORS OF THE LAW.

An editor who served four days on a jury says he is so full of law that it is hard for him to keep from cheating somebody.

A barrister once asked Lord Ellenborough, in the midst of a boring harangue: "Is it the pleasure of the court that I should proceed with my statement?"

The learned judge replied: "Pleasure, Mr.——, has been out of the question for a long time, but you may proceed."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ALTERATION OF NOTE.—An authorized alteration of a non-negotiable promissory note by the payee, after the execution thereof, by the insertion of the word "bearer" after the name of the payee, is a material alteration which will nullify the instrument.—WALTON PLOW CO. V. CAMPBELL, Neb., 52 N. W. Rep. 883.

2. APPEAL—Record.—Act Sept. 13, 1887, providing that instructions given, the giving of them, and the refusal to give instructions requested, "are deemed excepted to, and no exception need be taken to the same, * * * nor any bill of exception filed," renders it unnecessary to save exceptions at the time of granting or refusing instructions, but does not dispense with the necessity of incorporating such instructions, and the testimony necessary to explain them in a bill of exceptions, in order that they may be considered on appeal.

—KLEINSCHMIDT v. MCDERMOTT, Mont., 30 Pac. Rep. 394.

3. APPEAL—Review — Circuit Court of Appeals.—On appeal from a final decree the Circuit Court of Appeals has authority to go beyond a mere reversal, and enter such a decree as should have been rendered by the court below on the whole case, as shown by the record; and it is its duty to review all interlocutory proceedings, of every character, to which seasonable objection has been made and insisted upon.—POTTER v. BEAL, U. S. C. C. of App., 50 Fed. Rep. 860.

4. ATTACHMENT—Money Paid into Court.—Under Code, § 2950, providing that "money in the hands of an attorney at law, sheriff, or other officer may be attached," money which was taken by the sheriff from the person of a debtor arrested on a criminal charge, and which was attached while in his hands, and by him paid into court, may be attached while in the hands of the clerk of the court.—WARREN v. MATTHEWS, Ala., 11 South. Rep. 285.

5. ATTACHMENT—Situs of Debt.—For the purposes of attachment, a debt has a *situs* wherever the debtor can be found. Wherever the creditor might sue for its recovery, there it may be attached as his property, provided the laws of the forum authorize it.—HARVEY v. GREAT NORTHERN RY. CO., Minn., 52 N. W. Rep. 905.

6. ATTACHMENT — Wrongful Levy—Damages.—Where a person levies on property by a writ of sequestration and a writ of attachment under one seizure, and one writ is rightful and the other wrongful, he is liable for the wrongful levy.—FIRST NAT. BANK OF DECATUR v. HOUTS, Tex., 19 S. W. Rep. 1080.

7. ATTORNEYS—Misconduct.—A regularly licensed attorney must be held to know better than to inject into a legal argument irrelevant and scandalous denunciations of his opponent. A legal argument may consist of an appeal to reason or authority, and the advocate, either orally or in writing, may freely exercise his talents, and employ all the resources of his learning and logic which the scope of the questions afford; but he is not at liberty to go outside the record for purposes of scandal and abuse.—PEOPLE v. BROWN, Colo., 30 Pac. Rep. 338.

8. BAILMENT—Duty to Repair.—The rule of the civil law that a bailor for hire is bound to keep the thing in repair is not recognized by the common law, and, in the absence of express contract, the question as to which party is bound to repair largely depends on custom and usage and the character of the article.—CENTRAL TRUST CO. OF NEW YORK v. WABASH, ST. L. & P. RY. CO., U. S. C. C. (Mo.), 50 Fed. Rep. 857.

9. BUILDING AND LOAN ASSOCIATIONS.—Where the constitution of a building and loan association provides that, "when the stock of any series shall have attained the value of two hundred dollars each, one-half of the receipts shall be appropriated by the board exclusively to the liquidation of the same. Priority in payment shall be given to those willing to allow the highest premium, and no interest will be allowed on such money due from the time value is ascertained until payment is made,"—the holders of stock in the first series are entitled to be fully paid out of such receipts without being subject to competition in bidding with the holders of stock in any subsequent series which may have matured, and the company will be restrained from accepting bids offered by any members of any subsequent series.—DEARING v. BISHOP BAYLEY BLDG. & LOAN ASS'N. NO. 2., N. J., 24 Atl. Rep. 575.

10. CARRIERS—Lien for Freight.—Where the first of several connecting carriers guaranties a through rate on a shipment to a point on one of the other lines, the last carrier has a lien on the freight for its own charges, together with the charges of previous carriers advanced by it in ignorance of the guaranty, though the sum of these charges is more than the rate guarantied.—LOEWENBERG v. ARKANSAS & L. RY. CO., Ark., 19 S. W. Rep. 1051.

11. CARRIERS—Passengers.—In an action for ejection from a train for non-payment of fare, where it is conceded that a ticket on which plaintiff attempted to ride was invalid, and there is no evidence of a statute of the State in which the ejection occurred requiring ejection to be at a regular station, the only questions for the jury are whether plaintiff was ejected at a place or under circumstances which unreasonably exposed him to danger, and, if so, the extent of his injuries and the amount of damages.—RUDY v. RIO GRANDE W. RY. CO., Utah, 30 Pac. Rep. 366.

12. CARRIERS OF FREIGHT—Constitutional Law.—Rev. St. 1889, §§ 2598-2600, which require railroad companies to furnish double-decked cars for carrying sheep when requested, and provide a penalty for refusal to do so, are constitutional, being a proper regulation of common carriers.—EMERSON v. ST. LOUIS & H. RY. CO., Mo., 19 S. W. Rep. 1113.

13. CHATTEL MORTGAGES—Bill of Sale.—A bill of sale by plaintiff to defendant, which recites that it was given to secure the payment of a note, and provides that it shall be void if the note is paid at maturity, otherwise the title to become absolute, is a chattel mortgage.—SOELL v. HADDON, Tex., 19 S. W. Rep. 1087.

14. CONTRACT.—Plaintiff, being about to build a foundation for defendant and another person, agreed with them that, if the foundation were not completed by a time named, he should forfeit a certain sum for each day of delay. Plaintiff completed the foundation, but after the time named, and sued defendant for part of the cost of the foundation. There was evidence that the other party to the contract had paid plaintiff his part of the cost of the foundation: Held, that the non-joinder of the other party to the contract as a defendant did not deprive defendant of the right to claim the allowance for delay provided for by the contract.—LINCOLN v. LITTLE ROCK GRANITE CO., Ark., 19 S. W. Rep. 1056.

15. CONTRACTS—Delay.—A claim for damages for alleged breaches of contract and delays in execution cannot be urged when the party has proceeded in the execution of the contract in the manner adopted without complaint or protest, or any notice of objection, when he has completed the work and received settlement without complaint or reserve, and when he has himself acknowledged that the defendant had fully complied with all its obligations.—MCNAMARRA v. BOARD OF COM'RS. OF TENSAS BASIN LEVEE DIST., La., 11 South. Rep. 278.

16. CONTRACTS OF SALE—Damages.—In an action for damages for breach of contract to sell and deliver a certain amount of produce at a certain time and place, to be delivered free on board cars at place of shipment, it is incumbent on plaintiff, not only to prove the difference between the contract price and the price at the place of delivery at the time agreed, but also to prove the amount of the freight charges plaintiff would have had to pay, and thus show his actual damages by defendant's failure to deliver.—BUIST v. GUICE, Ala., 11 South. Rep. 280.

17. COPYRIGHT — "Dramatic Composition" — Stage Dance.—A stage dance illustrating the poetry of motion by a series of graceful movements, combind with an attractive arrangement of drapery, lights, and shadows, but telling no story, portraying no character, and depicting no emotion, is not a "dramatic composition," within the meaning of the copyright act.—FULLER v. BEMIS, U. S. C. C. (N. Y.), 50 Fed. Rep. 926.

18. CRIMINAL LAW—Appeal.—Where one was arrested for selling intoxicating liquors in contravention of Mansf. Dig § 4507, prohibiting the sale of either intoxicating or malt liquors without a license, but was tried for, and convicted under that act of, selling malt liquors, not intoxicating, without a license, he cannot object to such variance for the first time in the appellate court.—BOND v. STATE, Ark., 19 S. W. Rep. 1062.

19. CRIMINAL LAW—Burglary.—Under an indictment for burglary in breaking, etc., a "butcher's shop," evidence that the place was used exclusively for the sale of meat is sufficient, though no animals are slaughtered

or dressed there.—GREEN V. STATE, Ark., 19 S. W. Rep. 1055.

20. CRIMINAL LAW — Larceny — Intent.—Under Pen. Code, § 484, providing that larceny is the felonious stealing, leading, or driving away the personal property of another, where one drives away and sells stock of another, thinking it his own, as there is no felonious inlent, he is not guilty of larceny.—PEOPLE V. DEVINE, Cal., 30 Pac. Rep. 378.

21. CRIMINAL PRACTICE—Gaming.—Courts will notice judicially that money is a thing of value. In an indictment for gambling, it is not necessary to allege that the money which was bet and played for was of any value.—GRANT V. STATE, Ga., 15 S. E. Rep. 489.

22. CRIMINAL TRIAL—Competency of Juror.—A juror who states on his *voir dire* that he has formed an opinion as to defendant's guilt or innocence that will require evidence to remove, is disqualified, though he also states that he can discard that opinion, and give defendant a fair and impartial trial.—VANCE V. STATE, Ark., 19 S. W. Rep. 1066.

23. CRIMINAL TRIAL—Cross-examination of Accused.—An accused in a criminal cause, who avails himself, under Act No. 29 of 1886, of the privilege of testifying therein, is subjected to cross-examination by the State, but this examination extends only to matters concerning which the witness has given testimony.—STATE V. UNDERWOOD, La., 11 South. Rep. 277.

24. DEATH OF PARTIES—Revival.—Where a party is joined as party defendant in a suit against his wife merely in compliance with Rev. St. 1879, § 3468, requiring him to be so joined, and not for the purpose of obtaining any relief as against him, the suit may be continued against her after his death without reviving it in the name of his administrator.—CROOK V. TULL, Mo., 20 S. W. Rep. 8.

25. DEDICATION.—A complaint alleging that certain land had been dedicated to a specified public use is sufficient, even though it does not state whether such dedication was effected in the manner prescribed by statute or as at common law.—VILLAGE OF BUFFALO V. HARLING, Minn., 52 N. W. Rep 930.

26. DEED—Construction.—A deed purporting to lease, demise, and let unto a certain person and his wife certain land, and to convey the same to them, to have and to hold during their natural lives, and to their heirs after them, free from the control or interference of any and all persons, is within Pub. St. ch. 126, § 4, providing that when lands are given to a person for life, and after his death to his heirs in fee, "the conveyance must be construed to vest an estate for life only in such first taker, and a remainder in fee-simple in his heirs;" and the heirs, therefore, in such a case, cannot be deprived of such remainder by a subsequent deed from the grantor to the grantees, purporting to convey the same to the grantees.—SIMS V. PIERCE, Mass., 31 N. E. Rep. 718.

27. DEED—Estates in Futuro.—The common-law rule that a freehold estate to commence in the future cannot be created by deed without the intervention of a precedent estate to support it, is abolished in this State.—SABLEDOWSKY V. ARBUCKLE, Minn., 52 N. W. Rep. 920.

28. DEEDS—Limitation in Habendum.—Under Rev. St. 1889, § 8834, providing that, where a conveyance is to an individual without the word "heirs," the fee passes, unless the intent to pass a less estate shall expressly appear or be necessarily implied in the terms of the grant, the intent to pass a less estate is legally shown by a limitation in the *habendum* for the life of the grantee, remainder to his children.—MCCULLOCK V. HOLMES, Mo., 19 S. W. Rep. 1096.

29. DEED—Reformation.—A conveyance of a right of way to a railroad company will not be canceled or reformed because of the existence of a verbal agreement between the parties that a trestle, with a roadway thereunder, should be built across a ravine on the grantor's farm, which agreement was not inserted in the conveyance, because deemed unnecessary by the parties.—MEAD V. NORFOLK & W. R. CO., Va., 15 S. E. Rep. 497.

30. DEED—Reservations.—Plaintiff conveyed to defendant all his right and title to "all the buildings, tanks, derricks, pipes, pipe lines, fixtures, and all other personal property whatsoever," situated on any portion of the ranch: Held, that by such conveyance not only did defendant become the owner of the property therein specifically mentioned, and property of a kindred nature, but it also acquired the right to operate them in the manner they had theretofore been operated.—DIETZ V. MISSION TRANSFER CO., Cal., 30 Pac. Rep. 380.

31. DEEDS—Undue Influence.—Property conveyed by a deed, claimed to have been executed under undue influence, was advertised for sale by the grantee for two years, without objection of any kind from those interested adversely to the grantee, and without notice to innocent purchasers of their claims: Held, whether the deed was executed under undue influence or not, it must stand in favor of such purchasers.—PORTER V. PORTER, Va., 15 S. E. Rep. 500.

32. DIVORCE—Jurisdiction.—Pub. St. ch. 146, § 41, declares that "a divorce decreed in another State according to the laws thereof, and by a court having jurisdiction of the cause and of both the parties, shall be valid." A man living in Massachusetts moved to Colorado. His wife refused to follow him, and he obtained in Colorado a divorce for desertion, which was valid according to the laws of that State. The wife never was in Colorado, but the complaint and the summons were served on her in Massachusetts: Held that, as the domicile of the wife followed that of her husband, the Colorado court had jurisdiction of the parties, within the meaning of said statute.—LOKER V. GERALD, Mass., 31 N. E. Rep. 710.

33. DURESS—Pleading.—In an action to recover back money paid under duress, it is not sufficient to allege generally that the payment was compulsory. The facts constituting or creating the duress must be pleaded.—RAND V. BOARD OF COM'RS. OF HENNEPIN, Minn., 52 N. W. Rep. 901.

34. EJECTMENT — Pleading.—Under a general denial, in an action of ejectment the defendant may show that a deed in plaintiff's chain of title was procured by fraud and undue means.—STALEY V. HOUSEL, Neb., 52 N. W. Rep. 888.

35. ELECTIONS AND VOTERS — Qualification.—Const. art. 1, § 1, provides that a male citizen of the age of 21 or upwards, who has been a resident of the State for one year and of the legislative district of Baltimore, or of the county in which he may offer to vote, for six months next preceding the election, is "entitled to vote in the ward or election district in which he resides, at all elections:" Held, that a resident of Baltimore, otherwise qualified, cannot vote in a ward in which he does not reside, though that ward be within the legislative district or county where he has his residence.—KEMP V. OWENS, Md., 24 Atl. Rep. 606.

36. EQUITY — Substitution.—The individual property of a partner was conveyed in trust to secure a firm debt to a bank, and afterwards the assets of the firm were conveyed to secure the firm debts, including that to the bank, which was preferred. The partnership assets were sold, and the proceeds exhausted in satisfying the bank debts: Held, that the partnership creditors were not entitled to be substituted to the lien of the bank on the individual property, to the detriment of individual creditors secured by a deed of trust on the individual property, though such deed was executed after other deeds mentioned.—RIXY V. PEARE, Va., 15 S. E. Rep. 499.

37. ESTOPPEL—Election.—Though a creditor agrees, in consideration of having his debt preferred by a deed, to surrender notes held as collateral security, and afterwards in an attachment suit files an interplea claiming the benefit of that preference, he does not thereby elect to accept the provisions of the deed so that, though the deed be void, he is obliged to relin-

quish the notes; but the contract being executory, and the consideration having failed, he is relieved therefrom.—TAYLOR v. JUDSONIA MERCANTILE Co., Ark., 19 S. W. Rep. 1065.

38. ESTOPPEL IN PAIS—False Representations.—Where the purpose of an action or defense is, and its necessary effect, if sustained, will be, to deprive a party of property which he was induced to purchase by the representations of the other party, it is not necessary, in order to apply the doctrine of estoppel, for the jury to find as a fact that to permit the party to disprove the truth of his representations will operate as a fraud on or injury to the other party.—BELL v. GOODNATURE, Minn., 52 N. W. Rep. 908.

39. EVIDENCE—Attachment.—On issues as to the right of property in a stock of dry goods between the claimant and attaching creditors of the debtors, evidence of the officer who made the levy on claimant's premises, and the attaching creditors' attorney, then present, that claimant's agent, at that time in charge of the premises and goods in controversy, declared that he held them for claimant, and that they found him erasing the debtor's names from the boxes containing the goods, was admissible as evidence of declarations and acts within the scope of his agency.—GILMOUR v. HEINZE, Tex., 19 S. W. Rep. 1075.

40. EVIDENCE—Pledge — Negligence.—Where a note and mortgage were transferred to an incorporated bank as collateral security and for collection, evidence of the statement of the cashier of such bank, made while the note and mortgage were still in the bank uncollected, to inquiries as to whether or not they had been collected, that the failure to collect the note and mortgage was the "fault" and "neglect" of the bank, was not admissible, such statement not being the statement of any fact in the line of his duty as such cashier, nor within the scope of his authority as an officer of the bank, but the mere expression of his opinion as to the conduct of the bank.—PLYMOUTH COUNTY BANK v. GILMAN, S. Dak., 52 N. W. Rep. 869.

41. EXECUTION—Exemption.—Under Act April 9, 1849, § 2, which provides that a debtor may select from property levied on by execution $300 worth as exempt, where property is seized by an *alias* execution the debtor is entitled to a new selection without accounting for the property previously selected.—IN RE KRAUTER'S ESTATE, Penn., 24 Atl. Rep. 603.

42. FALSE IMPRISONMENT.—A person who in good faith and without malice merely makes complaint before a magistrate of the commission of a public offense in a matter over which the magistrate has a general jurisdiction, and the magistrate issues a warrant, upon which the person charged is arrested, the party laying the complaint is not liable for an assault and false imprisonment, although the particular case may be one in which the magistrate had no jurisdiction.—GIFFORD v. WIGGINS, Minn., 52 N. W. Rep. 604.

43. FEDERAL OFFENSE — Mailing Obscene Letter. — Rev. St. § 3893, as amended by Act Cong. July 12, 1876, prohibiting the mailing of obscene papers, is not in contravention of the first amendment to the federal constitution, providing that the freedom of the press shall not be abridged. —HARMAN v. UNITED STATES, U. S. C. C. (Kan.), 50 Fed. Rep. 921.

44. FEDERAL OFFENSE—Post Office—Obscene Letter.—Under Rev. St. § 3893, as amended by Act Cong. 1888, 25 St. p. 496, an obscene letter, sealed or unsealed, is nonmailable, the provision that no person shall open any sealed matter not addressed to himself being a sufficient protection to private correspondence.—UNITED STATES v. MARTIN, U. S. D. C. (Va.), 50 Fed. Rep. 918.

45. FORECLOSURE — Service.—The copy of the notice of foreclosure sale required to be served under the provisions of Gen. St. 1878, ch. 81, § 5, may be so served by leaving such copy at the house of the usual abode of the person actually in possession of the mortgaged premises with a person of suitable age and discretion then resident therein; and the fact that the party who left the copy supposed and believed that the person to whom he delivered it was the one actually in possession of the mortgaged premises does not affect the validity of the service.—GROFF v. NATIONAL BANK OF COMMERCE, Minn., 52 N. W. Rep. 934.

46. FRAUDS, STATUTE OF —An agreement for the sale of building material made prior to the 1st October, 1889, but which was within the statute of frauds, because not in writing, was performed by the delivery of the material subsequent to that date: Held, that the lien law of 1889, which went into effect on that date was applicable. — WHEATON v. BERG, Minn., 52 N. W. Rep. 926.

47. FRAUDULENT CONVEYANCES.—To successfully contest the validity of a chattel mortgage, the receiver of an insolvent corporation is not required to show that it is fraudulent as to creditors, but all he need do is to show facts as, under the statute, rendered it void as against the creditors of the corporation.— RECEIVER OF GRAHAM BUTTON CO. v. SPIELMANN, N. J., 24 Atl. Rep. 571.

48. FRAUDULENT CONVEYANCES— Preference. — It is not fraudulent for a debtor in failing circumstances to prefer certain creditors by conveying to them his stock of goods in satisfaction of claims amounting to the value of the goods. — GILKERSON-SLOSS COMMISSION CO. v. CARNES, Ark., 19 S. W. Rep. 1061.

49. HUSBAND AND WIFE— Community Property.—Acts 1873, p. 450, § 6, provides that the wife's separate property shall be subject to the management and control of the husband so long as it remains in money: Held, that the fact that the husband allowed the wife to purchase land with the proceeds of his separate estate is not conclusive evidence that such proceeds was a gift to the wife.—YESLER v. HOCHSTETTLER, Wash., 30 Pac. Rep. 398.

50. INSURANCE—Conditions — The language of a fire insurance policy, made a part of the complaint herein, which provided for the selection of appraisers and an award, in case the parties differed as to the amount of a loss, considered and construed: Held, that said language constituted a condition precedent to a right of action by the assured.— MOSNESS v. GERMAN-AMERICAN INS. CO. OF NEW YORK, Minn., 52 N. W. Rep. 932.

51. INSURANCE — False Answers in Application. — Where a policy of insurance provides that any untrue answer to questions contained in the application shall avoid the policy, the answers amount, in effect, to a warranty, and the matter of their materiality is not open.—STENSGARD v. ST. PAUL REAL ESTATE TITLE INS. CO., Minn., 52 N. W. Rep. 910.

52. INSURANCE—General Agents.—A person authorized to accept risks, to agree upon and settle the terms of insurance, and to carry them into effect by issuing or renewing policies, must be regarded as a general agent of the company.— SOUTH BEND TOY MANUF'G CO. v. DAKOTA FIRE & MARINE INS. CO., S. Dak., 52 N. W. Rep. 866.

53. INSURANCE —Policy.—In an action on a fire insurance policy, providing that the insurance company shall not be liable for a greater proportion of any loss than the amount of that policy shall bear to the whole insurance, a complaint is defective which fails to state what other insurance was on the property.—COATS v. WEST COAST FIRE & MARINE INS. CO., Wash., 30 Pac. Rep. 404.

54. INSURANCE COMPANY — Service of Summons .— Where a foreign mutual insurance company authorizes a person in this State, whom it designates as its local or branch secretary, to receive assessments from its members in this State, and countersign and deliver receipts therefor, and forward the money so received to the home office in another State, and the company has no other officer in the county where service is sought upon the company upon whom service may be had, held, that service on said local secretary is a valid service under our statute, and the refusal of the court to set it aside is not error.—SOUTHWESTERN MUT. BEN.

ASS'N OF MARSHALLTOWN v. SWENSON, Kan., 30 Pac. Rep. 405.

55. INTERSTATE COMMERCE— Connecting Lines.— Section 3 of the interstate commerce act, as amended by the Laws of 1889, provides (1) that every common carrier shall provide equal facilities for the interchange of traffic with connecting lines; and (2) that there shall be no discrimination in rates and charges between such lines. A petition, presented by a line affected, averred that petitioner was deprived by respondent of equal facilities with a competing connecting line for interchange of traffic, a discrimination in rates, the withdrawal of a joint through traffic, and a threat to close a through route via petitioner's line: Held a charge, not only of discrimination in rates, but of failure to provide equal facilities for interchange of traffic, and to bring before the commission the determination of both offenses.—NEW YORK & N. RY. CO. v. NEW YORK & N. E. R. CO., U. S. C. C. (N. Y.), 50 Fed. Rep. 867.

56. INTOXICATING LIQUORS— Sale Without License.— Under the organic act, providing that Laws Neb. ch. 50 entitled "Liquors" shall be in force in the territory, but no license shall be issued thereunder, taken in connection with said chapter 50, which makes it a misdemeanor to sell malt liquors without a license, the sale of such liquors is illegal.— KELLY v. COURTER, Oklahoma, 30 Pac. Rep. 372.

57. JUDGMENT LIEN—Record. — Under Rev. St. arts. 3158, 3159, providing that a judgment record will not operate as a lien unless the index thereto be alphabetical, and "show the name of each plaintiff and of each defendant," an index of a judgment record in which plaintiff's name appears as W & Co., and in which the name of one of defendants fails to appear except in the firm name, by which they were sued, is insufficient.—STEFFENS v. CAMERON, Tex., 19 S. W. Rep. 1068.

58. LANDLORD AND TENANT.—Where a tenancy is terminable upon notice and demand of possession, and such a notice and demand has been given, terminating the tenancy on a certain day, jurisdiction to issue a rule to show cause why the tenant should not be removed from the premises under the landlord and tenant act will be acquired by proof of such notice and demand; a second notice and demand after the termination of the tenancy is not acquired.—STATE v. RICHARDS, N. J., 24 Atl. Rep. 576.

59. LANDLORD AND TENANT— Lease.—A lessee, before the expiration of the lease, removed from the premises without the lessor's knowledge or consent, and then sent him the keys. The lessor received the keys for the purpose of caring for the building, but informed the person who brought them that he should hold the lessee for the rent, and that the keys were subject to the lessee's order: Held, that the lessor did not consent to a surrender of the lease.— BOWEN v. CLARKE, Oreg., 30 Pac. Rep. 430.

60. LANDLORD AND TENANT—Rent.—In an action for rent an instruction "that, if the premises were to be used with the knowledge of the plaintiff for the unlawful purpose of occupancy as a pool room, no rent could be recovered," is erroneous where there is no evidence that defendant was under any obligation to use the premises for such a purpose.—TAYLOR v. LEVY, Md., 24 Atl Rep. 608.

61. LIFE INSURANCE—Trust.—Where a policy of life insurance provides that the money shall be paid to the insured himself if he live to a certain date, and if he died before that time to a certain person, trustee for the insured's mother, it is competent to show by parol that the insured stated in his life-time that his design in creating the trust was to provide for his mother's support after his death.—BANCROFT v. RUSSELL, Mass., 31 N. E. Rep. 710.

62. LIMITATIONS. — Where the maker of a note, on being told that he must make a payment, or the note would be outlawed and suit would have to be commenced, consents to do so, but, finding that he has only enough money for other purposes, tells the holder that it is not necessary for any money to pass, and that an indorsement of a dollar on the note will be sufficient to renew it, and the holder thereupon makes the indorsement, stating it to be for renewal, this is sufficient to take the case out of the statute.—MCCRILLIS v. MILLARD, R. I., 24 Atl. Rep. 576.

63. LIMITATION OF ACTIONS —Conflict of Laws.—In an action in Vermont by a railway brakeman against the company for personal injuries occasioned in the province of Quebec, Can., defendant in its pleas set out "a general law of the province of Quebec," "that all suits for any damage or injury sustained by reason of the railway shall be instituted within 12 months:" Held, that this was a mere general statute of limitations, and as the right of action is given by the common law, and not by the statute, the statute of limitations of Vermont should govern.—JOHNSTON v. CANADIAN PAC. RY. CO., U. S. C. C. (Vt.), 50 Fed. Rep. 886.

64. LIMITATION OF ACTIONS—Trusts.—Where property is conveyed by plaintiff subject to a written agreement for its reconveyance on the payment of a certain sum, the grantee holds the property subject to an express trust in favor of plaintiff, and cannot set up the statute of limitations as a bar to an action by plaintiff to recover the property.— MANAUDAS v. MANN, Oreg., 30 Pac. Rep. 422.

65. MALICIOUS PROSECUTION—Probable Cause.—When an assignee of an insolvent firm exercises reasonable care and diligence in endeavoring to acquaint himself with the matters pertaining to an action instituted by his assignors, and as the result of such investigation finds such a state of facts as would lead a man of ordinary caution and prudence to believe the action to be meritorious, then he has probable cause for continuing the prosecution.—GURLEY v. TOMKINS, Colo., 30 Pac. Rep. 344.

66. MARATIME LIENS—Supplies.— When supplies are furnished to a vessel in a foreign port by order of her master a lien is implied, but for work done by order of the owner no lien will be held to exist unless proved by the agreement of the parties.—THE NOW THEN, U. S. D. C. (Del.), 50 Fed. Rep. 944.

67. MARRIED WOMAN—Mortgage.—Under Rev. St. 1889, § 2396, which empowers a married woman to convey her real estate, a mortgage executed by a husband and wife on the latter's land not held to her separate use, to secure a debt of the wife, is valid, though the debt was evidenced by a void note of the wife.—MEADS v. HUTCHINSON, Mo., 19 S. W. Rep. 1111.

68. MASTER AND SERVANT—Vice-principal.—In an action against a railroad company for injuries caused by a train running into a snow slide, if defendant's section foreman, whose duty it was to see that the track was clear, knew of the snow slide, and failed to inform plaintiff thereof, there was negligence of a vice-principal such as to render defendant liable.—FISHER v. OREGON S. L. & U. N. RY. CO., Oreg., 30 Pac. Rep. 426.

69. MEASURE OF DAMAGES—Contract.—The measure of damages, prior to institution of suit, in a suit for forfeiture and for damages for breach of a contract contained in a deed conveying land and privileges to a railroad company in consideration of its filling a tank with water for the grantor once in seven days, and providing for reversion of the land to the grantor on failure so to do, is the compensation for failure to so fill the tank, not the "value of the use and occupation of the land and privileges held by the defendant."—GULF, C. & S. F. RY. CO. v. DUNMAN, Tex., 19 S. W. Rep. 1073.

70. MECHANICS' LIENS.—Where the several owners of two contiguous lots unite in a joint contract for the construction of one building, to be situated in part on each, both lots may, for the purposes of mechanics' liens, be treated as one tract, and a single claim for a lien for labor or material performed or furnished for the construction of the building may be filed against both lots.—MILLER v. SHEPARD, Minn., 52 N. W. Rep. 894.

71. MECHANICS' LIENS—Account.—In an action to enforce a contractor's lien under the mechanic's lien law

of this State, an averment in the complaint as against persons made defendants, other than the owner of the premises sought to be charged with the lien, that they have, or claim to have, some interest in or lien upon the premises, which lien or interest, if any, accrued subsequently to the lien of the plaintiff, is sufficient, and, if such defendants have any interest in or lien upon the premises, they must set it out if they desire to defend the action.—RUST-OWEN LUMBER CO. v. FITCH, S. Dak., 52 N. W. Rep. 879.

72. MECHANICS' LIENS — Priorities.—The vendor and vendee in an executory contract for the sale of real estate cannot, by any stipulation between themselves, deprive third persons (not parties to the contract) of their statutory rights to liens for material or labor subsequently furnished to the vendee for the construction of buildings on the premises.—MALMGREN v. PHINNEY, Minn., 52 N. W. Rep. 915.

73. MECHANICS' LIENS—Priorities.—Where a building is constructed under one entire contract between the owner and the original contractor, the liens of all subcontractors, who furnished material or performed labor for the building at any time during the process of construction, attach, by relation, as of the date of the commencement of the work, and are entitled to a preference over a mortgage on the premises, executed by the owner subsequent to that date.—GLASS v. FREEBERG, Minn., 52 N. W. Rep. 900.

74. MECHANICS' LIENS—Priority over Mortgage.—The owner of a lot which was subject to an unrecorded mortgage contracted for the construction of a building upon the premises. After materials had been furnished for the construction of the building, but before the claims for liens therefor had been filed, the mortgage was placed on record: Held, that the recording act imposes no obligation upon a mortgagee to record his mortgage, as against mechanics' liens.—MILLER v. STODDARD, Minn., 52 N. W. Rep. 895.

75. MINES AND MINING—Ejectment.—In ejectment for a mining claim, the issue raised by the pleadings was whether plaintiff was the owner and entitled to the possession of an alleged vein having its apex within his location, after the same had passed under the side lines of an adjoining claim: Held, that it was not a change of the issue to defend upon the ground that both parties had the apex of separate veins within the boundaries of their claims, which veins, in descending, became united within the side lines of defendant's claim; and that therefore defendant was entitled to hold all of the vein from the point of junction downward.—COLORADO CENT. CONSOLIDATED MIN. CO. v. TURCK, U. S. C. C. of App., 50 Fed. Rep. 888.

76. MINING CLAIM—Location.—The location notice of a mining claim described the claim as being "1,500 feet in length on this sledge, * * * and 300 feet on each side of the center of location," and as running east 300 feet and west 1,200 feet "from monument," the ledge being "situated up near the head of the right-hand fork of what is known as 'Tie Canyon,' about 5 miles from" a certain railroad: Held insufficient, under Rev. St. U. S. § 2324, which requires such a description of claim as by referee to some "natural object or permanent monument" will identify it.—DARGER v. LE SIEUR, Utah, 30 Pac. Rep. 363.

77. MORTGAGE — Condemning Mortgaged Land.—A mortgagee cannot, before maturity of his debt, recover compensation for the impairment of his security by condemning part of the mortgaged land for the purposes of a public road.—AGGS v. SHACKELFORD COUNTY, Tex., 19 S. W. Rep. 1085.

78. MORTGAGE—Covenant.—Where a mortgagor gives a second mortgage with covenant of warranty as against the first mortgage, and the first mortgage is foreclosed, and the title obtained by the foreclosure is afterwards conveyed to the mortgagor, his title thereby acquired inures to the benefit of the second mortgagee.—AYER v. PHILADELPHIA & B. FACE BRICK CO., Mass., 31 N. E. Rep. 717.

79. MORTGAGES—Foreclosure.—Upon a foreclosure of a mortgage of real estate under the power of sale it ceases to be a security for a debt, and the rights of the mortgagor and purchaser are to be measured by the statute, and not by anything in the mortgage, so that, though it pledge the rents, the purchaser is not entitled to them during the year for redemption.—PIONEER SAVINGS & LOAN CO. v. FARNHAM, Minn., 52 N. W. Rep. 897.

80. MORTGAGE—Foreclosure.—After a decree of foreclosure and order of sale, and satisfaction of the decree, it was error to order the register to execute a reference, and state an account between the parties as to other transactions and indebtedness not covered by the original or cross-bill, and wholly outside the mortgage debt.—PERDUE v. BROOKS, Ala., 11 South. Rep. 282.

81. MORTGAGE FORECLOSURE—Service by Publication.—Section 28, ch. 81, Gen. St. 1878, providing for service by publication against certain defendants in actions to foreclose mortgages upon real estate, is void both as to resident and non-resident defendants.—SMITH v. HURD, Minn., 52 N. W. Rep. 922.

82. MUNICIPAL CORPORATIONS—Boundaries.—The report of the harbor and land commissioners purporting to define the boundary line of tide water between Hull and Boston is not evidence as to the jurisdiction of the city of Boston over islands situated in said tide water, since the duty of the commissioners was to make an equitable division of the tide water for purposes of municipal jurisdiction, and they had no power to define the boundaries on land between municipalities.—RUSS v. CITY OF BOSTON, Mass., 31 N. E. Rep. 708.

83. MUNICIPAL CORPORATIONS—Ordinances.—A printed copy of a city ordinance, published by authority of the city, is *prima facie* evidence of its legal existence and contents, to overcome which the burden of proof is on the opposing party.—ARKADELPHIA LUMBER CO. v. CITY OF ARKADELPHIA, Ark., 19 S. W. Rep. 1053.

84. MUNICIPAL CORPORATIONS—Ordinances.—When a statute directs notice of facts to be published in a newspaper the courts will presume, in the absence of any legislative intimation to the contrary, that the notice is to be given in the ordinary language of the State, and in a newspaper published in the same tongue.—STATE v. MAYOR, ETC. OF JERSEY CITY, N. J., 24 Atl. Rep. 571.

85. MUNICIPAL CORPORATIONS—Streets.—A city council having general authority to establish the grades of streets may, under peculiar circumstances, fix the grade for one side of a street on a materially different level or plane from that of the other side; and if this renders it incidentally necessary to construct a retaining wall along the center of the street, to support the earth on the higher grade, that may be done.—YANISH v. CITY OF ST. PAUL, Minn., 52 N. W. Rep. 925.

86. MUNICIPAL CORPORATION—Streets—Condemnation Proceedings.—Where judgment is rendered for the city in street condemnation proceedings, the owner cannot, in a prosecution for obstructing the street opened in pursuance thereof, defend on the ground that the proceeding was illegal for want of valid service of notice on the "tenant of the freehold," and that no effort was made to agree with the owner as to the amount of compensation—defenses which he could have made, but failed to make, in the condemnation proceedings.—FOSTER v. CITY OF MANCHESTER, Va., 15 S. E. Rep. 407.

87. NATURALIZATION—Selling Certificate.—Under Rev. St. § 5424, it is a criminal offense to sell a certificate of naturalization to other than the person to whom it was issued, and it is immaterial that such certificate was fraudulently procured, by misrepresentation to the court, or that it was forged, if *prima facie* and apparently valid.—UNITED STATES v. RAGAZZINI, U. S. C. C. (N. Y.), 50 Fed. Rep. 923.

88. NEGLIGENCE — Damages.—Section 3 of the act of 1877, concerning damages, provides for compensatory, not exemplary, damages. The measure of damages is the pecuniary loss (not exceeding statutory limit) which the party entitled to sue will be likely to suffer

in consequence of the death of deceased.—MOFFATT v. TENNEY, Colo., 30 Pac. Rep. 348.

89. NEGLIGENCE—Landlord and Tenant.—Where the only defect in steps leading from a porch to the ground 4 or 5 feet below is that the upper steps is some 12 inches shorter than the others, and this is clearly discernible in the daytime, or when the porch is lighted, the landlord is not liable for an injury to his tenant's visitor, caused by his stepping off in the dark from the projecting end of the upper step into the vacancy at the end of the lower ones, the fault being that of the tenant in not providing a light.—EYER v. JORDAN, Mo., 19 S. W. Rep. 1095.

90. NEGOTIABLE INSTRUMENTS — Consideration.—The partial failure of the consideration for a promissory note may be interposed in defense in an action to recover on the note.—DURMENT v. TUTTLE, Minn., 52 N. W. Rep. 909.

91. OFFICE AND OFFICER—Register of Deeds.—About 50 sections of the statutes of Oklahoma territory recognize the office of county register of deeds as existing separate and distinct from the office of county clerk, and in two sections it is referred to as in connection therewith, but there are no provsions creating the office: Held, that the legislature understood that the office exists separate from that of the county clerk.—TERRITORY v. DIEHL, Okla., 30 Pac. Rep. 368.

92. OFFICE AND OFFICER—Removal.—Where an officer is appointed for a definite term, subject to removal for specified causes, he can be so removed only after notice to him of the cause assigned, and an opportunity given him to defend.—STATE v. HEWITT, S. Dak., 52 N. W. Rep. 875.

93. PAYMENT—Receipt.—A liquidated and undisputed overdue debt is not discharged by a simple payment of a part of what is due, though accompanied and witnessed by a receipt in full not under seal.—MURPHY v. KASTNER, N. J., 24 Atl. Rep. 564.

94. PRINCIPAL AND AGENT—Mining Claims—Trusts.—General evidence that an alleged agent for locating and acquiring mining claims and interests was supported, before and after he had located and acquired in his own name a particular lode and interest, by the claimant thereof, and that subsequent payments were made to him by the claimant for protecting and working the lode, does not establish the relation of agency for its location and acquisition, in the absence of proof of the payment by the claimant to the alleged agent of money for that purpose.—FIRST NAT. BANK OF DENVER v. CAMPBELL, Colo., 30 Pac. Rep. 357.

95. PROCESS—Service of—Privilege.—A person who comes from a distant State to defend a suit for divorce, the hearing of which is passed from day to day without any new assignment on account of the wife's sickness, is in "attendance" on the court, without the strict meaning of the term, and is not, therefore, liable to arrest upon a civil process in any other suit.—ELLIS v. DE GARMO, R. I., 24 Atl. Rep. 579.

96. PUBLIC LANDS — Remedial Act. — Congress has plenary power to prescribe the conditions upon which government title may be obtained, and the procedure in relation thereto. It may repeal, extend, or limit previous enactments at will, provided prior vested rights be not injuriously affected.—FEE v. BROWN, Colo., 30 Pac. Rep. 340.

97. RAILROAD COMPANIES — Damage to Stock.—The plaintiff's mare was pasturing on the defendant's right of way, at a place where it ought to have been, but was not, inclosed. She was frightened by the sounding of a whistle upon an engine drawing a train of cars, and ran along by the side of the track on the right of way into a barbed-wire fence running at right angles with the railroad, and was injured: Held, that the defendant was liable, under the statute.—MO. PAC. RY. CO. v. GILL, Kan., 30 Pac. Rep. 414.

98. RAILROAD COMPANIES—Failure to Repair Street.—Where the charter of a railroad company gives it a right to construct its railroad upon and along any highway, road, street, etc., if necessary, but requires the company to "put such highway," etc., "in such condition and state of repair as not to impair or interfere with its free and proper use," the requirement is a continuing one so that the company may at all times be required to keep the highway in the specified condition and state of repair, so far as consistent with the presence of the railroad upon it.—VILLAGE OF WAYZATA v. GREAT NORTHERN RY. CO., Minn., 52 N. W. Rep. 913.

99. RAILROAD COMPANIES—Injury to Persons on Track.—Where the track and right of way of a railroad in a city are habitually used by the public for a way to the city streets, and there are gates in the railroad fence to enable pedestrians to go upon the track, a person walking on such track on his way to a street is not a trespasser.—LYNCH v. ST. JOSEPH & I. RY. CO., Mo., 19 S. W. Rep. 1114.

100. RAILROAD COMPANIES—Street Railroads—Collision.—The degree of care required at the crossing of a highway and an ordinary steam railroad is not the test of care required in crossing the track of a street railroad on a public street. Hence the rule in the former case that one approaching the crossing must look up and down the track before attempting to cross is not necessarily applicable to the latter. The failure to do so is not, as a matter of law, negligence.—SHEA v. ST. PAUL CITY RY. CO., Minn., 52 N. W. Rep. 902.

101. RAILROAD MORTGAGE—Duties of Trustees.—Where the trustees in a railroad mortgage are empowered, under certain circumstances, to declare all the bonds secured thereby to be past due, they are bound to exercise this power with the utmost good faith, and only when approved by their honest, disinterested judgment, as the best thing for the interest of the bondholders.—BOUND v. SOUTH CAROLINA RY. CO., U. S. C. C. (S. Car.), 50 Fed. Rep. 853.

102. RECEIVERS—Services Rendered.—One who renders to a receiver valuable services, with the expectation of being paid therefor, but not in pursuance of any contract, express or implied, cannot recover compensation therefor, being a mere volunteer.—DANIELL v. EAST BOSTON FERRY CO., Mass., 31 N. E. Rep. 711.

103. RECEIVER'S CERTIFICATE—Lien.—The lien of receiver's certificate continues as long as the order authorizing their issuance remains in force, though such order was made without notice to parties interested; and the fact that a reference is had to determine all claims against the receiver, and a report is confirmed which makes no allusion to the certificates, is not an adjudication against them, when it appears that they were not presented or considered, and that their holder had no notice of the reference.—MERCANTILE TRUST CO. v. KANAWHA & O. RY. CO., U. S. C. C. (Ohio), 50 Fed. Rep. 875.

104. RECEIVER OF CORPORATION.—The receiver of a corporation appointed by a court of equity cannot sue in his own name to recover property of the corporation which has never been in his possession nor been assigned to him, where authority to bring such suit has not been conferred on him by statute or by decree of court.—WILSON v. WELCH, Mass., 31 N. E. Rep. 712.

105. REFORMATION—Stipulation—Judgment.—The parties to a pending action having, for the purpose of compromising the same, entered into an agreement under seal, embracing mutual releases, and a stipulation (which was carried into effect) for the entry of a judgment for a merely nominal sum, they being then ignorant of a material fact, the court had not the power, after the discovery of such fact, to reform the agreement on motion, relieving one of the parties (in part) from the release which he had made, but leaving the other party bound by the corresponding release on his part.—GERDTZEN v. COCKRELL, Minn., 52 N. W. Rep. 930.

106. REMOVAL OF CAUSES—State and Federal Courts.—Questions of fact arising on a petition for removal are for the federal court alone and the State court has no jurisdiction to determine them.—SINCLAIR v. PIERCE, U. S. C. C. (Mass.), 50 Fed. Rep. 851.

107. REPLEVIN—Lien for Work.—Coats made by defendant out of cloth furnished by plaintiff for that purpose cannot be replevied before completion, where the evidence fails to show that defendant violated any contract, express or implied, or that plaintiff paid defendant's wages or made a tender.—HILLSBURG v. HARRISON, Colo., 30 Pac. Rep. 355.

108. SALE—Evidence.—Where, in an action against alleged partners for the price of goods sold, the only issue tendered was by a denial of the partnership, the court properly excluded evidence tending to show that it did not exist, since, the sale and delivery of the goods being admitted, it was immaterial whether defendants were partners or not.—WALLACE v. BAISLEY, Oreg., 30 Pac. Rep. 432.

109. SPECIFIC PERFORMANCE — Contract. — One who purchases real estate for $1,750, but couples the tender of that amount for the property with the condition that the vendors convey the property to him by deed setting forth a consideration of $2,250 therefor, is not, in an action to enforce the contract, entitled to judgment of specific performance.—SLATER v. HOWIE, Kan., 30 Pac. Rep. 413.

110. SPECIFIC PERFORMANCE — Parties.— In an action for specific performance, an adverse claimant in possession cannot be made a party, and so forced into a court of equity, when his claim is not in any way connected with plaintiff's equity. — ASHLEY v. CITY OF LITTLE ROCK, Ark., 19 S. W. Rep. 1059.

111. TAXATION — Corporate Bonds — Residents. — Although Act June 30, 1885, § 4, makes it the duty of the "treasurer" of each private corporation, domestic or foreign, on the payment of interest on bonds issued by it and held by residents of this commonwealth, to deduct three mills on every dollar of interest paid, and return the same into the State treasury, nevertheless, on his failure to do so, an account for the tax is properly settled against the corporation itself.—COMMONWEALTH v DELAWARE & HUDSON CANAL CO., Pa., 24 Atl. Rep. 509

112. TAXATION—Decree.—Where the complaint, in a proceeding to sell land for overdue taxes, alleged delinquency in the payment of taxes for a certain year only, a sale on a *pro confesso* degree, which included unpaid taxes for other years is void.—ELSEY v. FALCONER, Ark., 20 S. W. Rep. 5.

113. TAXATION—Exemptions.— The shares of stock of an insurance company are not exempt from an *ad valorem* tax because the company's charter provides that a State tax shall be paid on "the amount of capital stock actually paid in, in lieu of all other taxes and assessments."—STATE v. MEMPHIS CITY BANK, Tenn., 19 S. W. Rep. 1045.

114. TAXATION — Exemptions— Manufacturing Corporations.—Under Act June 1, 1889, § 21, exempting from taxation corporations "organized exclusively" for manufacturing purposes, and "actually carrying on manufacturing within the State," a corporation chartered to do manufacturing only, but which is engaged in other business as well as in manufacturing, is not wholly exempt, but only the amount of its capital employed otherwise than in manufacturing is taxable.—COMMONWEALTH v. WILLIAM MANN CO., Pa., 24 Atl. Rep. 601.

115. TAXATION— Homestead Improvements. — Under St. ch. 75, § 3, providing for taxation of "improvements upon government lands," improvements made by homestead settlers on their claims are taxable. — CROCKER v. DONOVAN, Oklahoma, 30 Pac. Rep. 374.

116. TAXATION OF CAPITAL STOCK.—Where the charter of an insurance company provides that there shall be a certain State tax "on the amount of capital stock actually paid," its capital stock is exempt from further taxation, State, municipal, or otherwise, but an *ad valorem* tax may be laid upon its shares of stock.—STATE v. HOME INS. CO., Tenn., 19 S. W. Rep. 1042.

117. TENANT FOR LIFE—Injury to Crops.—Where the owner of land for the term of her own life sues for damage to crops by reason of the construction and maintenance of a mill-dam, and the evidence discloses that she did not cultivate the land, and had no crops thereon, she cannot recover, although her adult son, by her license, did cultivate the land for his own benefit, had crops thereon, and they were damaged.—BROWN v. WOODLIFF, Ga., 15 S. E. Rep. 491.

118. TRUSTS—Pleading. — The complaint alleged that defendant and plaintiff lived together as man and wife; that their relations were intimate and confidential; that defendant had great influence over plaintiff; and that in consequence of these relations plaintiff, in buying certain property, had it conveyed to defendant, that he might hold it in trust for her: Held, that the allegations would support a decree that the property was held by defendant in trust for plaintiff.—MULLER v. BUYCK, Mont., 30 Pac. Rep. 386.

119. TRUSTS— Verbal Declaration. — Under Code 1886, § 1845, providing that no trust concerning lands, except such as results by implication or construction of law, can be created, unless by instrument in writing, a parol promise, made to deceased by his executors, to convey certain land after his death to complainant, cannot be enforced.— TOLLERSON v. BLACKSTOCK, Ala., 11 South. Rep. 284.

120. USURY—Liability of Sureties.— That a principal in a usurious note, waiving homestead and exemption, fails to plead the usury, or to assert his right to homestead and exemption on account of it, but submits to a judgment against himself for the whole debt, will not hinder the sureties from taking advantage of the usury as a ground of discharge; they having been ignorant that the note was tainted at the time of its execution by them. Their discharge does not depend upon actual loss, but upon the risk of loss to which they were exposed by reason of the concealed usury in the contract of lending of which the note was the result.— HARRINGTON v. FINDLEY, Ga., 15 S. E. Rep. 483.

121. VENDOR AND PURCHASER.—An equitable right or title, not fully perfected as such,—thus, where it arises under a contract, and there remains something for the party to do under the contract in order to acquire, perfect, preserve, or be entitled to a remedy upon the right or title—may be lost by abandonment. —SMITH v. GLOVER, Minn., 52 N. W. Rep. 912.

122. VENDOR AND VENDEE — Replevin.— In replevin for machinery by the seller thereof on a contract providing the title remaining in him until full payment of purchase money, defendant may, by way of defense, plead damages for nondelivery of part of the machinery sold, and an offer to pay the balance of the purchase money in excess for the damages which may be ascertained.—AMES IRON WORKS v. REA, Ark., 19 S. W. Rep. 1063.

123. WILL—Devise of Community Property.—Testator devised community land, giving one tract to his son, and the other to his wife for life, with remainder to his daughter, and bequeathed all his personal property to his wife for life, with remainder after her death to his son and daughter: Held, that testator's intention was to dispose of the entire community right, and the wife was put to her election whether she would take under the will or against it.—SMITH v. BUTLER, Tex., 19 S. W. Rep. 1083.

124. WILL—Probate.—Where no appeal has been taken from the surrogate's probate of a will, and the time limited by statute within which an appeal might have been taken has expired, an orphans' court cannot, upon application directly to it, set the surrogate's probate aside.—IN RE STRAUB'S WILL, N. J., 24 Atl. Rep. 569.

125. WITNESS —Failure to Call.— Where the alleged fraudulent representations, on the ground of which defendant sought to avoid the purchase of a mine, were made by plaintiff to defendant in the presence of a third person, and defendant failed to secure the testimony of such person, without explaining why he could not, the court was authorized to infer that the testimony, if produced, would be adverse to defendant. —WIMER v. SMITH, Oreg., 30 Pac. Rep. 416.

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